

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

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7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11 Adv. Case No. 23-01010-mg

12 - - - - - x

13 CHRISTOPHER LEE SHANKS,

14 Plaintiff,

15 v.

16 CELSIUS NETWORK LLC, ET AL.,

17 Defendants.

18 - - - - - x

19 Adv. Case No. 23-01016-mg

20 - - - - - x

21 GEORGIU, ET AL.,

22 Plaintiff,

23 v.

24 Defendants.

25 CELSIUS NETWORK LLC, ET AL.,

1 - - - - - x

2 Adv. Case No. 23-01104-mg

3 - - - - - x

4 OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

5 Plaintiff,

6 v.

7 Defendants.

8 CELSIUS NETWORK LLC, ET AL.,

9 - - - - - x

10 Adv. Case No. 23-01107-mg

11 - - - - - x

12 AD HOC GROUP OF BORROWERS,

13 Plaintiff,

14 v.

15 Defendants.

16 CELSIUS NETWORK LLC, ET AL.,

17 - - - - - x

18

19 United States Bankruptcy Court

20 One Bowling Green

21 New York, NY 10004

22

23 June 28, 2023

24 10:03 am

25

1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: KAREN

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1 Hybrid Hearing RE: Motion to Approve Transfer of Property.
2 Motion to Approve the Transfer of Property Pursuant to
3 Bankruptcy Code Section 105 and Rule 9019 of the Federal
4 Rules of Bankruptcy Procedure [Docket No. 2758, 2772, 2783].
5

6 Hybrid Hearing RE: Debtors' Motion for Entry of an Order (I)
7 Authorizing Christopher Ferraro to Act as Foreign
8 Representative and (II) Granting Related Relief [Docket No.
9 2802, 2827].
10

11 Hybrid Hearing RE: Debtors' Third Motion for Entry of an
12 Order (I) Extending the Debtors' Exclusive Period to Solicit
13 Acceptances of a Chapter 11 Plan Pursuant to Section 1121 of
14 the Bankruptcy Code and (II) Granting Related Relief [Docket
15 No. 2805, 2827, 2838, 2841].
16

17 Hybrid Hearing RE: Motion of Euclid Financial Institution
18 Underwriters, LLC, a Duly Authorized Agent of Certain
19 Underwriters at Lloyds of London and Republic Vanguard
20 Insurance Company for Relief from the Automatic Stay to the
21 Extent Applicable [Docket No. 2585, 2639, 2760, 2839, 2842,
22 2849, 2851, 2859, 2873].
23

24 Hybrid Hearing RE: Motion for Relief from Stay [Docket No.
25 2760, 2763, 2781, 2839, 2842, 2849, 2851, 2873, 2585, 2763].

1
2 Hybrid Hearing RE: Motion for Entry of an Order (I) allowing
3 Non-Insider CEL Token Claim holders to join the Earn group
4 for equitable treatment and have access to the same
5 optionality of equity and liquid cryptocurrency at the
6 Petition Date Price of \$0.81565; if Otherwise, (II) Request
7 the Debtors to Submit Evidence Supporting Inequitable
8 Treatment of Unsecured Creditors in the Earn Group (III)
9 Granting Related Relief [Docket No. 2169, 2208, 2215, 2240,
10 2241, 2260, 2329, 2583, 2840, 2844 to 2846, 2848].

11
12 Hybrid Hearing RE: Motion for Entry of an Order (I) to
13 Dollarize Non-Insider CEL Token Claims at the Petition Date
14 Price of \$0.81565; if Otherwise, (II) Request the Debtors to
15 Submit Evidence Supporting Inequitable Treatment of
16 Unsecured Creditors in the Earn Group (III) Granting Related
17 Relief [Docket No. 2216, 2327, 2584, 2593, 2840].

18
19 Hybrid Hearing RE: First Interim Application for Interim
20 Professional Compensation of Delaware ADR, LLC for Fee
21 Examiner Sonchi, Other Professional Period from October 13,
22 2022 Through February 28, 2023, fee: \$137,400.00, expenses:
23 \$2046.28 [Docket No. 2622, 2624].

24
25 Hybrid Hearing RE: First Application for Interim

1 Professional Compensation as Attorneys for Fee Examiner for
2 Godfrey & Kahn, S.C., Other Professional, Period from
3 October 13, 2022–February 28, 2023, fee: \$637,735.00,
4 expenses: \$7359.71 [Docket No. 2623, 2624].

5
6 Adversary proceeding: 23-01010-mg Christopher Lee Shanks v.
7 Celsius Network LLC, et al.
8 Hybrid Status Conference [Doc# 1, 3 to 8, 12, 13]

9
10 Adversary proceeding: 23-01016-mg Georgiou, et al. v.
11 Celsius Network LLC, et al.
12 Hybrid Pre-Trial Conference [Doc# 1 to 4, 6 to 8, 10]

13
14 Adversary proceeding: 23-01016-mg Georgiou, et al. v.
15 Celsius Network LLC, et al.
16 Hybrid Status Conference RE: Motion to the Dismiss Complaint
17 [Doc# 5, 6, 7, 9, 11 to 13]

18
19 Adversary proceeding: 23-01104-mg Official Committee of
20 Unsecured Creditors v. Celsius Network Limited
21 Hybrid Pre-Trial Conference [Doc# 1, 2, 5, 6]

22
23 Hybrid Hearing RE: Debtors' Motion for Entry of an Order (I)
24 Authorizing and Approving Certain Fees and Expenses for the
25 Backup Plan Sponsor, and (II) Granting Related Relief

[Docket No. 2774, 2825, 2831, 2847].

Adversary proceeding: 23-01107 Ad Hoc Group of Borrowers v.

Celsius Network LLC, et al.

Status Conference [Doc# 1 to 4]

Hybrid Hearing Re: Debtor's Motion Seeking Entry of an
Order (I) Authorizing the Sale of Osprey BTC Shares and (II)
Granting Related Relief. (Doc ## 2775, 2776, 2825)

Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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8 UNITED STATES DEPARTMENT OF JUSTICE

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13 BY: SHARA CORNELL

14

15 ALSO APPEARING:

16 CHRIS FERRARO

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P R O C E E D I N G S

THE COURT: Please be seated. All right, good morning. Obviously, we're here on Celsius Network, LLC, 22-10964.

MR. KOENIG: Good morning, Your Honor.

THE COURT: One of the few times we've been in the Courtroom.

MR. KOENIG: Good morning, Your Honor.

THE COURT: Good morning, Mr. Koenig.

MR. KOENIG: Chris Koenig, Kirkland & Ellis for the Debtors. It's great to be back in your Courtroom in person again. We're looking forward to being in your Courtroom more regularly in the future. We've been busy since our last hearing before Your Honor via Zoom. We concluded the month-long auction. We selected The Fairbank Group as the Plan Sponsor. We'll commence a NewCo that will maximize the value of the Debtor's liquid and illiquid assets to the benefit of the Creditors. We filed an updated Chapter 11 Plan with Fahrenheit a few weeks ago and late on Monday night, we filed the initial version of the Disclosure Statement. As we discussed at the hearing a few months ago, the Disclosure Statement includes a long Executive Summary that is intended to be a plain English description of the Plan for accountholders to help -- to help explain the complicated Plan transactions. That Executive Summary

1 includes charts detailing recovery -- the recovery --

2 THE COURT: Just slow down a little bit.

3 MR. KOENIG: I'm sorry, Your Honor. -- including
4 charts detailing the recoveries for the accountholders for
5 each of the Debtors' programs or custody, loans, reports --

6 THE COURT: What's the estimated recovery for it?

7 MR. KOENIG: Just shy of 70 percent, Your Honor.

8 Also, on Monday night, we announced a settlement between the
9 Debtors, the Committee and the Series B Holders. The
10 litigation between the parties regarding the Series B
11 Holders' right to recover from the Debtor's estates has been
12 one of the most important and contested issues in these
13 cases, was it getting under confirmation. The litigation
14 was incredibly expensive and threatened to delay these
15 Chapter 11 cases. So, in exchange for a payment of \$25
16 million from the GK8 sale proceeds, which had been held in a
17 separate reserve pursuant to a prior Court Order, we're
18 going to resolve all the disputes between the parties.
19 We're very pleased to be able to reach this consensual
20 resolution, which cuts off the associated professional fee
21 burner, which was very significant and allows us to work
22 towards obtaining approval of our Disclosure Statement and
23 move on to confirmation.

24 Of course, that settlement, not for today's
25 hearing, is set for July 18th. We'll have plenty more to

1 say on that topic then, we wanted to highlight it given the
2 importance of the dispute and I believe Your Honor was
3 reserving a few days of your calendar in late July which you
4 can now have back as the litigation schedule is on hold
5 pending approval of the settlement in mid-July.

6 THE COURT: Let me ask, what impact, if any,
7 assuming the settlement is approved, will that have on the
8 Class Certification Motion and also issues of substantive
9 consolidation?

10 MR. KOENIG: Yes, Your Honor. So, the settlement
11 contemplates the substantive consolidation and/or when a
12 company claim would be allowed pursuant to the settlement.
13 The settlement resolves that dispute between the Series B
14 Holders, the Debtors and the Committee. The Class
15 Certification Motion is going to proceed in parallel. The
16 Series B Holders have agreed not to object to that Class
17 Certification Motion. But we think that there may,
18 nonetheless, be benefits to the estate and to the Claims
19 Resolution process by allowing that to proceed.

20 THE COURT: Just amplify the -- with respect to
21 substantive consolidation. I think, obviously, the earned
22 accountholders have been most concerned about, have
23 obviously the decision that I had entered. What, if any,
24 impact will this settlement have on the earned
25 accountholders' ability to reach assets in the parent?

1 MR. KOENIG: They will be able to recover, in
2 full, from the parent under the Chapter 11 Plan. Under the
3 Chapter 11 Plan, we had already contemplated that all of the
4 Debtor's assets, regardless of which box they were at, would
5 be distributed to accountholders in one way or another,
6 either through substantive consolidation or the allowance of
7 an intercompany claim. This settlement allows that proposal
8 from the Debtors to proceed in the Chapter 11 Plan subject
9 to the \$25 million settlement payment being made in the
10 Series B.

11 THE COURT: Okay. Are there -- what's the amount
12 of separate claims directly against the parent
13 (indiscernible)? There was apart from that -- obviously,
14 the earned accountholders' claims are direct -- were
15 directly against LLC. What are the separate claims that
16 have been asserted against the parent?

17 MR. KOENIG: Sure, Your Honor. I don't have that
18 number in front of me. Certainly, the vast majority of the
19 claims are accountholder claims. There are certain loans
20 that were made from C&L specifically, so the creditor body
21 is not identical. That being said, given the size of the
22 accountholder claims, we don't believe that the difference
23 is significant.

24 THE COURT: All right. So, essentially, if the
25 settlement is approved, is that -- will that moot the issue

1 of substantive consolidation and having to -- we'll have a
2 contested evidentiary hearing with respect to substantive
3 consolidation.

4 MR. KOENIG: Your Honor, the Settlement Order that
5 we proposed and attached in the 9019 Motion will provide for
6 substantive consolidation of those two estates and so, after
7 the Settlement Order is entered, that will be granted.

8 THE COURT: Okay.

9 MR. KOENIG: And anybody who opposes that relief
10 should object to the Motion, the Settlement Motion.

11 THE COURT: Okay.

12 MR. KOENIG: The point being, Your Honor, that
13 these cases have been going on for just under a year now.
14 From the Debtor's perspective, we've reached the endgame of
15 these cases. We selected the Fahrenheit Group as the Plan
16 Sponsor, and we've secured a backup option that provides us
17 with optionality in case we need to pivot for any reason.
18 We filed a Plan and Disclosure Statement. We intend to
19 promptly seek approval of the Disclosure Statement and if
20 approved, solicit the Plan and seek confirmation. We're
21 headed for the exit so that we can promptly return liquid
22 cryptocurrency to accountholders and create the NewCo will
23 be owned by accountholders. If I could just spend one
24 moment on scheduling. I know at the prior hearing, Your
25 Honor indicated that you wanted to read the Disclosure

1 Statement before giving us a hearing. I don't know if
2 you've had a chance to look at it, at all.

3 THE COURT: I haven't.

4 MR. KOENIG: But just wanted to check in on
5 scheduling what the best way to proceed was.

6 THE COURT: When would you like to have a -- put
7 it this way, I do want to read the Disclosure. I have not
8 read the Disclosure. I've been rather busy. Let's put it
9 that way. I do want to read the Disclosure Statement. I'm
10 certainly anxious to move this along as quickly as possible.
11 Does the Debtor and the Committee -- have you consulted
12 about a proposed date for a Disclosure Statement hearing?

13 MR. KOENIG: Your Honor, we're prepared to proceed
14 as promptly as possible. Obviously, we need 35 days' notice
15 of the hearing for 28 days' notice for the objection
16 deadline and then 7 days' notice of the hearing. We have a
17 Motion that we could file in short order. I think we were
18 seeking a date in early to mid-August, depending on what
19 works with your calendar. We will work backwards from
20 there.

21 THE COURT: I think we'll make it work. I will
22 endeavor to review the Disclosure Statement this weekend.

23 MR. KOENIG: Okay. Very good. So, we'll go ahead
24 and prepare the Motion and then, would you like us to get a
25 hearing date from Chambers before filing it?

1 THE COURT: Yes, I would.

2 MR. KOENIG: Very good. Thank you. I know we
3 have a very long agenda --

4 THE COURT: I think Deanna can give you a number
5 of suggested alternative dates, but I think we should be
6 able to move it along.

7 MR. KOENIG: Great. We will -- we will coordinate
8 with her and thank you.

9 THE COURT: Thank you.

10 MR. KOENIG: I know we have a long agenda this
11 morning. So, unless you have any questions for me, I would
12 propose to turn it over to Mr. Ferraro for a brief updating
13 of business.

14 THE COURT: That's fine. Thank you.

15 MR. KOENIG: Great. We filed a few slides last
16 night at Docket #2918 and Deanna, if you could, my
17 colleague, Nima Khosrabi is going to share the slides if you
18 can make him the co-presenter.

19 CLERK: Could you spell the last name please?

20 MR. KOENIG: K-H-O-S-R-A-B-I. I think his hand is
21 raised on the Zoom.

22 CLERK: Yes, all right. He is a co-host. He can
23 present.

24 MR. KOENIG: Wonderful. Good morning, Mr.
25 Ferraro.

1 MR. FERRARO: Hello?

2 MR. KOENIG: Good morning, Mr. Ferraro. Could you
3 please tell the Court about the current status of the
4 withdrawal process?

5 MR. FERRARO: Yeah. Hey, thanks, Chris and good
6 morning, Your Honor. The company has continued with process
7 withdrawals for (indiscernible). To date, we've completed
8 32 million of pure custody withdrawals for transfer of the
9 preference threshold, totaling 80 percent of the distributed
10 (indiscernible), with approximately 8 million
11 (indiscernible) to be withdrawn. (indiscernible) remaining
12 assets in the custody account that are not part of the pure
13 custody tranche. Users (indiscernible) custody settlement
14 before they get the approval of that line. They will
15 receive 72.5 percent of their assets that will remain in the
16 custody accounts in two payments of 36.25 percent, less
17 (indiscernible) fees, (indiscernible) to withdraw the first
18 36.25 percent. Overall, more than 50 percent of the
19 eligible users opted into the settlement and we began
20 processing these withdrawals (indiscernible), 39 million
21 withdrawals or 83 percent of the eligible value.

22 Sorry, give me one second. I had an incoming call
23 that messed up my screen. Sorry about that. On April 20th,
24 the Court approved a settlement among Celsius, the Withhold
25 Ad Hoc Group and the UCC that provided participating members

1 of the Withhold Ad Hoc Group of any kind of distribution of
2 50 of their eligible withhold claim. With the remaining 85
3 percent of the value of (indiscernible) claim, it be
4 converted to an early claim and treated as such under the
5 Plan. To date, the company has processed withdrawals
6 representing 89 percent of the eligible withhold value with
7 Withhold Ad Hoc Group.

8 Finally, on May 25th, the company began to process
9 the line to users who deposited on the petition date to
10 withdraw those assets. As of June 25th, the company has
11 processed withdrawals for over 70 percent of the eligible
12 value. In summary, the company would process withdrawals of
13 over \$72 million in value across 50+ clients for tens of
14 thousands of accountholders across a wide range of
15 jurisdictions and (indiscernible). Now turning to the next
16 slide.

17 MR. KOENIG: Mr. Ferraro, can you please provide
18 an update on the company's mining operations?

19 MR. FERRARO: Yeah, since April, we deployed
20 11,000 additional machines, representing an increase of 20
21 percent. We ended May with 64,000 (indiscernible) adjusted
22 EBIDTA of 1.5 million, relatively (indiscernible) month over
23 month. As a quick reminder, EBIDTA for this business is
24 effectively the pre-tax income --

25 THE COURT: If you could slow down a little and

1 just repeat that. You were breaking up a little bit. So,
2 just try and repeat what you just said, slowly.

3 MR. FERRARO: Yeah, I'm sorry, Your Honor. I'll
4 start with the (indiscernible) on this slide. Since April,
5 we have declared 11,000 of these new machines representing
6 an increase of 20 percent. We ended May with 64,000 rigs
7 deployed. In May, we had an adjusted EBITDA of 1.5 million,
8 relative (indiscernible) month. As a quick reminder, EBIDTA
9 for this business is effectively the pre-tax income
10 (indiscernible) to add back depreciation (indiscernible)
11 revenue was 10.2 million in May, (indiscernible). The
12 uptime or the percentage of time our machines are hashing
13 decreases 61 percent in May and 70 percent (indiscernible).
14 The reduction in uptime resulted from a scheduled
15 maintenance outage at the heart of (indiscernible). That
16 outage occurred from mid-May to early June. The power
17 (indiscernible) mid-June.

18 Moving to the next, which notes the longer term
19 (indiscernible). On the bottom left draft, we see the
20 64,000 (indiscernible) end of May and since the course of
21 (indiscernible) contract rejection in early-January, our
22 rigs deployed have increased steadily each month from 20,000
23 to 64,000 as of the other day, which is an increase of 128
24 percent since the rejection. Now moving to the next slide.

25 MR. KOENIG: And Mr. Ferraro, can you provide a

1 quick update on the company's current financial position?

2 MR. FERRARO: Yeah. As a quick reminder, we
3 started the case with 138 million in cash. We got 137
4 million on hand as of (indiscernible), which is a decrease
5 (indiscernible). That's all I have for you, Your Honor.

6 THE COURT: Thank you.

7 MR. KOENIG: Thank you, Your Honor. I'll turn the
8 lectern over to the Debtor's Special Counsel.

9 THE COURT: Thank you.

10 MR. HURLEY: Good morning, Your Honor. Mitch
11 Hurley with Akin Gump Strauss Hauer Feld --

12 THE COURT: Good morning, Mr. Hurley.

13 MR. HURLEY: -- Special Counsel to Celsius. Good
14 morning. Your Honor, I'm here today on the uncontested
15 Motion of Celsius to approve the transfer of property
16 pursuant to Bankruptcy Code Sections 105 and Rule 9019 of
17 the Federal Rules of Bankruptcy Procedure. Our Motion was
18 filed on June 6, 2023. An Amended Notice of Motion was
19 filed on June 7, 2023, reflecting the Court's updated,
20 hybrid -- in-person and procedures for hearings. As you may
21 recall, on December 6th of last year, Your Honor entered a
22 9019 Order approving a Stipulation to settle and discontinue
23 the adversary proceeding between Celsius and Prime Trust.
24 That was adversary Proceeding #22-01140, which has since
25 been closed. That Stipulation represented a significant

1 achievement in the Chapter 11 cases providing Celsius with
2 virtually all the relief that it sought in its adversary
3 proceeding with Prime Trust, including a return of coins
4 that are worth around \$23 million in recent prices. As
5 required under the Stipulation and the 9019 Approval Order,
6 Prime Trust transferred the property subject to the
7 Stipulation to Celsius on December 13, 2022.

8 Since that time and in accordance with the terms
9 of the Stipulation and Order, Celsius has stored that
10 property and fully segregated designated Celsius wallets,
11 and for over six months now, has not accessed, transferred,
12 distributed or otherwise used the subject property. The
13 Stipulation contemplates that further Order of this Court is
14 needed before Celsius may transfer or use the subject
15 property. As the state property of the currently segregated
16 assets, Celsius submits it should be available to Celsius in
17 the ordinary course, including in connection with reaching
18 corporate finance activities and Confirmed Plan of
19 Reorganization. Accordingly, Celsius filed the Motion to
20 Transfer seeking an Order authorizing it to transfer the
21 subject property from the segregated designated Celsius
22 wallets to Celsius Network deposit vaults and the Celsius
23 Network, LLC U.S. workspace, and from there, to access,
24 transfer and use the subject property in the ordinary course
25 as it does with all other assets held in those accounts and

1 consistent with the sound exercise of Celsius business
2 judgment.

3 As reflected in the Certificate of Service we
4 filed on June 8, 2023, Celsius provided notice of the Motion
5 to Transfer to all relevant parties, including the standard
6 service list as set forth in the Court's Case Management
7 Order, as well as all potentially impacted Celsius users who
8 received notice via electronic mail to their last known
9 email address. The deadline to object to the Motion to
10 Transfer was June 21, 2023, and as reflected in the
11 Certificate of No Objection filed on June 26, 2023, we are
12 not aware of any objections having been filed. Since no
13 objection had been filed, we submit that the relief
14 requested in this Motion is warranted, we ask that Your
15 Honor grant the Motion to Transfer the Assets.

16 THE COURT: Thank you. Mr. Colodny, does the
17 Committee have -- you didn't file a response so --

18 MR. COLODNY: No, we do not, Your Honor and we've
19 spoken to Mr. Hurley in debrief.

20 THE COURT: All right. Does anybody else wish to
21 be heard? Motion is granted.

22 MR. HURLEY: Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 MR. LOTONA: Good morning, Your Honor. For the
25 record, Dan Lotona, Kirkland & Ellis, on behalf of the

1 Celsius Debtors. The next item on the agenda is the
2 Debtor's Motion to Appoint Christopher Ferraro as Foreign
3 Representative in the High Court of Justice in the U.K.
4 pursuant to the Cross-Border Insolvency Regulations. Your
5 Honor, subsequent to the entry of the Order, the Debtors
6 will seek to recognize the Chapter 11 cases in the U.K. as
7 foreign main proceedings given that the center of main
8 interest is in the United States. Your Honor, this relief
9 is necessary to protect the Debtor's assets in the U.K.
10 Absent protection of those assets and the protection of the
11 Automatic Stay and various Orders concerning the ownership
12 of cryptocurrency, certain customers may seek self-help
13 remedies in the U.K. which conclude up to winding up this
14 Celsius Network, Ltd. entity in the U.K. This, of course,
15 would result in inequitable outcomes --

16 THE COURT: Has any action or proceeding been
17 commenced against the English parent?

18 MR. LOTONA: Yes, Your Honor. There was a small
19 claims court proceeding where the accountholder was awarded
20 a judgment. That is currently in the process of being
21 appealed. What we're concerned about is, if that judgment
22 is affirmed on appeal, similar customers will seek similar
23 self-help remedies in the U.K. Again, Your Honor, this
24 relief is necessary to ensure equitable treatment for all
25 accountholders across the world. Your Honor, the Debtors

1 received no objections. It had been coordinating with the
2 Creditor's Committee on this relief.

3 THE COURT: Motion is granted.

4 MR. LOTONA: Thank you, Your Honor. The next item
5 on the agenda is the Debtor's Motion to sell their shares in
6 the Osprey Bitcoin Trust. Your Honor, the Osprey Bitcoin
7 Trust is a trust where the shares trade over the counter and
8 allows individuals and other institutions to obtain indirect
9 access to bitcoin without all the intended risks of bitcoin
10 such as holding private keys and storing cryptocurrency in
11 their wallets on the (indiscernible). Your Honor, the
12 Debtors hold approximately 35 percent of the outstanding
13 shares of the Osprey Bitcoin Trust. These shares were
14 purchased in March of 2021 in two tranches for 1,000
15 bitcoin. At the time, the blended rate of bitcoin was
16 approximately \$55,000 and the shared price of purchase
17 ranged between \$16 and \$19. Your Honor, this is a highly
18 illiquid asset, the daily average trade value is only
19 approximately 16,000 shares per day. As a result, it would
20 take the Debtors a significant portion of time to either
21 unwind their position, which would be at a significant
22 discount given the large holdings or it would take a
23 significant amount of time to acquire enough shares to earn
24 a majority voting interest where they could seek to elect to
25 dissolve the trust, which again, it's not clear on the face

1 of the documents that that's even an option. Even if it
2 were, it could result in protracted litigation that would
3 tie up those shares for a protected period of time.

4 Your Honor, the Debtors received a third-party
5 proposal to purchase the shares at the closing price as
6 reflected on Bloomberg on the closing date, which would
7 happen no later than July 10th. Your Honor, that would
8 result in approximately \$15-20 million coming into the
9 estates at the current price which is \$7 as of today. The
10 net asset value is currently \$10.18, which represents
11 approximately a 30 percent discount. And that's where the
12 Osprey Bitcoin Trust shares have traded historically between
13 30-40 percent discount (indiscernible). Your Honor, the
14 benefits of this transaction will increase liquidity at a
15 time where the Debtors are on the precipice of confirming
16 these Chapter 11 cases. It sells an otherwise illiquid
17 asset that would instead remain on the Debtor's balance
18 sheet and is a sound exercise of the business judgment. The
19 Debtors received no objections to this and the UCC supports
20 the relief requested.

21 THE COURT: Mr. Colodny?

22 MR. COLODNY: Good morning, Your Honor. Aaron
23 Colodny for the Official Committee of Unsecured Creditors.
24 I agree with Mr. Lotona, it's a large illiquid position and
25 we believe that this maximizes value. We've consulted with

1 our investment bankers familiar with the securities and they
2 believe this is a good transaction, so we're okay moving
3 forward.

4 THE COURT: All right. Does anybody else wish to
5 be heard? It's granted.

6 MR. LOTONA: Thank you, Your Honor. At this time,
7 I will cede the lectern to my partner, Mr. Koenig.

8 THE COURT: Thank you.

9 MR. KOENIG: Again, for the record, Chris Koenig
10 for the Celsius Debtors. Your Honor, next is exclusivity.
11 I'll be brief in my opening remarks given my comments at the
12 start of the hearing. We've now concluded the auction,
13 chosen a Plan Sponsor, filed a Plan and Disclosure
14 Statement, we've worked to build consensus for the Plan, and
15 we will continue to do so. We've worked closely with the
16 Committee to develop the Plan and Disclosure Statement,
17 which are both supported by the Committee. We've reached
18 settlements with Custody, Withhold and now the Series B
19 Preferred Holders. We're pleased to announce that we have a
20 mediation session scheduled with Judge Wiles on July 17th.
21 That mediation session will include the Committee, the Loan
22 Ad Hoc Group, the Earned Ad Hoc Group and (indiscernible) to
23 try to build additional consensus for the Plan. But we need
24 additional time to seek approval of the Disclosure Statement
25 and if approved, solicit the Plan and seek confirmation.

1 So, we've sought a 90-day extension of the solicitation
2 exclusive period, which would take us through September
3 30th, which is our target date for confirmation and also the
4 milestone in the Plan Sponsor Agreement. That's simply how
5 much time we will need. We only received one objection to
6 exclusivity from Mr. Adler on behalf of the Loan Ad Hoc
7 Group. The Debtors and the Committee had worked with Mr.
8 Adler for many weeks before the auction to try to reach an
9 agreement.

10 THE COURT: I thought you had a settlement?

11 MR. KOENIG: Ultimately, we're unable to take that
12 settlement and turn it into definitive documents,
13 unfortunately. But as I mentioned, we've agreed to
14 mediation with Mr. Adler in mid-July and hope to be able to
15 reach a compromise that works for all parties. But as per
16 his objection to exclusivity, his objection is essentially a
17 confirmation objection and even he is not arguing that
18 exclusivity should be terminated, instead, he's arguing that
19 it should be limited to 60days. Again, Your Honor, we've
20 asked for 90 days because we believe that that's how much
21 time it will need to solicit -- that we will need to solicit
22 and confirm the Plan. We don't think it makes sense to have
23 to obtain another exclusivity extension midway through
24 soliciting votes. And we believe an extension is clearly
25 warranted here in light of all the progress that we've made

1 and it's notable that we only received one objection to
2 exclusivity in light of how contested prior exclusivity
3 hearings have been.

4 In short, we believe that cause has been
5 demonstrated as required under the factors in this district.
6 These cases are undoubtedly large and complex. We have made
7 good faith progress toward reorganization by filing a Plan
8 of Disclosure Statement and reaching various settlements.
9 We need more time to obtain approval of the Disclosure
10 Statement and the Plan. We're paying our bills on time and
11 we're working to build additional consensus at mediation
12 session in mid-July. Accordingly, we believe a 90-day
13 extension is appropriate. We'd respectfully request that
14 the Court provide us with the time to finish what we
15 started.

16 THE COURT: All right. Mr. Adler?

17 MR. ADLER: Good morning, Your Honor. David Adler
18 from McCarter English on behalf of the Ad Hoc Group of
19 Borrowers. It's a pleasure to be back in your Courtroom.
20 My first time in three years. We filed an Objection last
21 Wednesday and we basically raised two issues that I think go
22 to exclusivity, not -- the Debtors characterize it as a Plan
23 objection, but we said essentially that the lack of
24 communication in this case basically dropped off to nothing
25 from April 23rd until June 13th and that the Borrowers --

1 the Ad Hoc Group of Borrowers received nothing from the
2 Debtor in terms of where we were, if the original proposal
3 had fallen apart, what the alternatives are. And on June
4 13th we received a call, and we were told that we had to
5 rush to mediation and my response, Your Honor, was, we
6 should have done this. You obviously knew that the deal
7 wasn't going to go forward, you should have done this back
8 in April when the auction started or early May. So, the
9 first issue is the lack of communication between the Debtor
10 and the Ad Hoc Group. The second issue is the lack of
11 progress. I mean obviously, last time that we were here for
12 the second exclusivity extension, there was a Power Point
13 put up by the Debtors showing that there was a settlement
14 with the Ad Hoc Group of Borrowers. That fell apart and now
15 we've got all the way backwards and we have to go to a
16 mediation and basically start from Square One with Judge
17 Wiles. The Ad Hoc Group of Earned Creditors are going to be
18 there as well, which shows that not too much consensus has
19 been reached with them. And that really was our concern in
20 objecting to exclusivity.

21 We do recognize, Your Honor, that this is a
22 complex case and there are a lot of moving parts. But from
23 the Ad Hoc perspective, I'm going to fall back on the point
24 that these mediations or discussions could have started in
25 May or in June, not rush, rush, rush, you know, we have to

1 get into mediation when I get a phone call on June 13th.
2 And for that reason, we think that there should be a shorter
3 time period for exclusivity of 60 days so that we can come
4 back here and revisit where we are at that point. And
5 unless Your Honor has any questions --

6 THE COURT: I don't.

7 MR. ADLER: Thank you, Your Honor.

8 THE COURT: Does anybody else want to be heard?
9 Mr. Colodny?

10 MR. COLODNY: Your Honor, Aaron Colodny for the
11 Official Committee of Unsecured Creditors. We support the
12 Debtor's Motion for Exclusivity. I think the level of
13 collaboration between the Debtors and the Committee has been
14 unprecedented in these cases. That was shown in the
15 auction, which was truly unique, and the Debtors took the
16 Committee's comments, we consulted with them, and we were
17 ultimately picking the management team that was going to
18 lead a new company. Mr. Adler is entirely correct. Prior
19 to the auction, we had extended discussions with a group of
20 borrowers around a construct bid extended the loans. The
21 issue became we were not able to get to an agreement. The
22 agreement that was on the table had a significant amount of
23 risk that the estates were not comfortable moving forward
24 with and we didn't have the support of the Borrowers and it
25 seemed that the support of the Earned Group was against that

1 sort of settlement. So, at the auction, we turned our focus
2 to maximizing value for the estate. After the auction
3 concluded, we are entirely focused on reaching an agreement
4 with the borrowers.

5 I think consensus here is extremely important and
6 prior to filing the Plan, we made a proposal to the
7 Borrowers that had a framework. I've spoken with Mr. Adler
8 since then and believe that we are committed to work
9 together to find something that works, and we've posed
10 mediation so that the Earned Group and the Borrower Group
11 can be in the same room to discuss the treatment together.
12 I think everyone with the Disclosure Statement, as Your
13 Honor will see this weekend, sees that there is a very
14 delicate balance here. If you take liquid cryptocurrency
15 and give it one group, it comes out of the other groups too.
16 And I am sure that the Earned Creditors are not happy with
17 the amount of liquid cryptocurrency they are receiving, same
18 as though the Borrowers are. Any discussion has to be based
19 on the legal entitlements of the groups as they exist today,
20 which is why I believe that bringing everybody together
21 through mediation with Judge Wiles will help to level set
22 the playing field and come to an agreed solution. At the
23 same time, I don't want to wait until July 17th. As Mr.
24 Adler said, we should start discussions if we can come to a
25 framework that works for both parties before then and go to

1 that mediation with that framework in hand, I think it will
2 be much more productive and we're committed to making that
3 happen.

4 THE COURT: Thank you. Does anybody else wish to
5 be heard? Okay.

6 MS. CORNELL: Good morning, Your Honor. This is
7 Shara Cornell with the Office of the United States Trustee.
8 The United States Trustee did not file an Objection to the
9 Extension of Exclusivity in this instance. I've spoken both
10 with counsel for the Debtors and counsel for the committee
11 with respect to the relief in motion. The United States
12 Trustee understands the need for an extension; however, for
13 a limited extension, less than 90 days would be our
14 preference. Thank you, Your Honor.

15 THE COURT: All right. Anybody else wish to be
16 heard? All right. The Objections to extending exclusivity
17 are overruled. The Motion to Extend for 90 days is granted.
18 Let me just comment. I was certainly -- I thought, from
19 what had been discussed at prior hearings, that there had
20 been a successful resolution with the Borrowers. Obviously,
21 that fell apart. I don't want to get into what the reasons
22 or whatever, there's no deal. I think it's really very
23 important that a consensual resolution of the issues be
24 reached. I think that confirmation -- if the Borrowers
25 object to confirmation, I think it will complicate

1 considerably the issues that the Court is faced with. So,
2 I'm quite pleased that Judge Wiles has agreed to be the
3 mediator. I haven't talked to him, and I will not talk to
4 him about the mediation. He, obviously, is very
5 knowledgeable about crypto and I think even without regard
6 to that, he's an excellent choice as a mediator. So, I
7 appreciate his willingness to do this. He has a very busy
8 calendar and schedule, as well. So, please put all your
9 efforts into trying to reach a consensual agreement with the
10 Borrowers. I think it's an important set of issues.

11 But with respect to exclusivity, I really do view
12 the objection as really, as Plan issues, not as really as to
13 exclusivity. I think that the case is -- it's taken time to
14 get here, but compared to a lot of cases, it's actually been
15 a relatively brief time compared to many large, complicated
16 cases. So, let's keep it moving forward. Your Motion is
17 granted.

18 MR. KOENIG: Thank you, Your Honor. We intend to
19 do so. Up next is the Motion to Pay Certain Fees to a
20 Backup Plan Sponsor. Your Honor, from the beginning of the
21 auction process, the Debtors have been focused on
22 maintaining optionality. The cryptocurrency industry is
23 fast-moving and has been subject to regulatory scrutiny, and
24 we want to make sure, of course, that we're fully
25 regulatorily compliant in whatever transaction we propose.

1 So, we have been focused on making sure that we have an
2 executable backup plan in case the Fahrenheit NewCo
3 transaction cannot be completed for any reason. These cases
4 are too expensive and have gone on for too long to have us
5 have to go all the way back to the drawing board if we have
6 to pivot to another transaction. We need to get out of
7 bankruptcy promptly.

8 For that reason, the Plan we have filed
9 contemplates two transaction structures, the Fahrenheit
10 NewCo deal, which we believe is the best way to maximize the
11 value of Celsius' liquid and illiquid assets for the benefit
12 of our Creditors, and it also includes a pivot to an orderly
13 wind down as a backup if this NewCo transaction cannot be
14 completed for some reason. That way we don't have to start
15 from scratch and file a new Plan and Disclosure Statement.
16 We could quickly pivot to a wind down and promptly conclude
17 these cases without having to start over. Of course, we
18 don't presently see any reason why the NewCo Plan could not
19 be completed. We've been in close contact with the
20 regulators, we've answered their questions, but we need to
21 have optionality just in case. We're very cognizant of what
22 happened in Voyager, and it turned out to be very helpful
23 that Voyager had backup wind down built into their Plan
24 given what happened with finance. It allowed them to
25 quickly pivot an exit. This optionality comes with a price,

1 of course.

2 The Debtors and the Committee have selected The
3 Brick as the backup Plan Sponsor. The Brick would take
4 Celsius' mining business public and liquidate Celsius' other
5 assets for the benefit of Celsius' Creditors. We've entered
6 into a Plan Sponsor Agreement that obligates The Brick to
7 serve as this backup bidder through the end of the year.
8 But in order to be an effective backup, we need to be
9 closely coordinated with them. We need to make sure that
10 The Brick is ready to take over as Plan Sponsor and promptly
11 make distributions if we need to pivot late in the process.
12 So, that requires us to closely consult with The Brick on a
13 host of different issues relating to the Backup Plan, from
14 strategies on how to best convert the Debtor's all coin
15 portfolio to bitcoin in need for distribution, how to best
16 maximize the value the Debtor's illiquid assets, make sure
17 that The Brick is ready to make distributions of liquid
18 cryptocurrency to creditors and make sure that The Brick is
19 ready to take the mining business public. In short, The
20 Brick needs to be running alongside the Fahrenheit
21 transaction in parallel so that they can step in if need be.

22 And of course, there's a cost to that work by The
23 Brick, which the Debtors believe, in their business
24 judgment, is a cost worth paying in order to secure a backup
25 that preserves its optionality and prevents us from having

1 to further extend the cases if the Fahrenheit transaction
2 cannot be completed. So, we've agreed to pay a backup
3 commitment fee, pay certain expenses and pay consulting fees
4 for ongoing consultation between the Debtors and The Brick
5 to ensure that The Brick can be an effective backup option.
6 We've structured these backup fees in a way that ensures
7 that the Debtor's estates receive maximum value from The
8 Brick, including a monthly fee that is earned out in
9 exchange for Brick's ongoing consultation with us. And The
10 Brick has a lot to offer the estate in that regard. One of
11 the members is (indiscernible) Absolute Return Advisors, who
12 is uniquely qualified to help the Debtors decide how to best
13 convert their cryptocurrency into bitcoin (indiscernible) to
14 maximize the value of our (indiscernible) portfolio. And
15 Brick is partnered with Gemini's Distribution Agent, which
16 is helpful as we finalize our plans for the Distribution
17 Agent under any Plan.

18 But we believe that the fees are imminently
19 reasonable in light of the potential cost of delay and the
20 value of securing this backup. The cost of these cases is
21 around \$20 million a month and having a backup transaction
22 will likely save at least a month off the timeline if we had
23 to pivot. And The Brick reduced their fees since the filing
24 of the Motion. They reduced the Consultation Services Fee
25 by \$50,000 a month and they waived that fee, in its

1 entirety, for May. They also clarified that their expense
2 reimbursement through today's date will not exceed \$1.25
3 million in the aggregate. They also agreed to reduce their
4 ongoing go-forward expense reimbursement to \$300,000 per
5 month down from \$500,000 per month. And they also agreed to
6 reduce their fees under the backup proposal itself by a
7 total of \$7 million if we actually have to pivot to them.

8 Finally, as we disclosed in the Reply we filed
9 yesterday, we received another bid for a wind down. Our
10 Backup Plan Sponsor Agreement, of course, includes a broad
11 fiduciary out if we identify a better offer that is more
12 value maximizing than The Brick. But we believe it is
13 important to lock in the Backup Proposal so that we have it
14 in hand and can move towards the Disclosure Statement
15 Hearing and Confirmation confidently that we have a backup
16 if, for whatever reason, we need it. Again, as with
17 exclusivity, we think it's notable that we only received one
18 objection from the U.S. Trustee. None of the Debtor's
19 economic stakeholders objected to the Motion. I'll respond
20 in more detail after Ms. Cornell speaks, but we address her
21 objection in the Reply that we filed yesterday. This is not
22 the case of the Debtors paying an unsuccessful bidder as
23 compensation for participating in the auction. Rather,
24 these fees are for the work that they are doing to serve as
25 a backup transaction which is very valuable to the Debtor's

1 estates. The fees are appropriate to compensate The Brick
2 for their commitment to serve as a backup for a six-month
3 period of time and all the work that they need to do in
4 order to ensure that they are an effective and available
5 backup option for the Debtors. With that, unless Your Honor
6 has questions for me at the outset, I'll turn the
7 evidentiary portion of the motion.

8 THE COURT: So, I do have questions. So, you
9 filed the Motion without a Declaration. My Chambers have
10 been calling for weeks asking for a Declaration in support.
11 We were told that the Motion references a Declaration by
12 Christopher Ferraro. There is no Declaration by Christopher
13 Ferraro. There's this late-filed Declaration by Mr.
14 Schreiber from Alvarez and Marsal. So, I haven't had
15 sufficient time to really focus on this because you were so
16 late in filing anything in support and explain it. So, why
17 don't you have to file a Motion to obtain Brick as a
18 consultant? I mean, you -- that's what you ordinarily --
19 you hire consultants, you've done this before in the case
20 and it requires a Motion. You haven't done that. I don't
21 understand -- there are lots of fees built into this, as
22 well. I don't understand all the pieces of it. What's the
23 aggregate amount of compensation that Brick is going to
24 receive and how much for each of the categories of
25 compensation they're going to receive? You've basically

1 dropped this on us without sufficient evidentiary support.

2 MR. KOENIG: Your Honor, on the evidentiary
3 support, we apologize for being so late.

4 THE COURT: No, don't apologize. You know, you
5 think apologies are going to get you a decision today?

6 MR. KOENIG: No, look, Your Honor, we understand
7 you take the --

8 THE COURT: Answer first about the requirement
9 that you have a consultant retained, the retention approved
10 by the Court?

11 MR. KOENIG: So, The Brick is working on their
12 own. They are the backup bidder, they are working for their
13 own account.

14 THE COURT: You're -- you've said they're going to
15 be a consultant to the Debtor for the purposes of this
16 backup bid, okay. You've said they're a consultant, to you,
17 you know, to the Debtor. You have to get them retained.
18 They have to file -- it's going to require to show they have
19 no conflicts. You know, I'm exasperated because I
20 understand what you're trying to accomplish but follow the
21 rules.

22 MR. KOENIG: Your Honor, we don't believe that
23 they're professional within the meaning of the Section 327
24 and 328.

25 THE COURT: Really?

1 MR. KOENIG: They are the backup bidder who would
2 provide us -- they would --

3 THE COURT: Well then, they're not entitled to any
4 consulting fees then, right? Because they're a backup
5 bidder. They're not a consultant, they're a backup bidder.

6 MR. KOENIG: Sure. So, what we did -- what we
7 tried to do, Your Honor. We could have structured the fees
8 as a one-time backup commitment fee or something of that
9 nature and avoided that issue. What we tried to do is
10 structure this in a way that the estate's got the maximum
11 bang for the buck by ensuring that they work with us as the
12 process goes along, to ensure that they're actually ready to
13 -- so that we can pivot to them any time, if needed.

14 THE COURT: Let's assume that the successful bid,
15 they're executed. What's the aggregate compensation that
16 Brick you expect will be entitled to under what you're
17 asking for?

18 MR. KOENIG: It depends on what --

19 THE COURT: Put everything together, how much?
20 What's the range?

21 MR. KOENIG: It depends on when we exit from
22 bankruptcy, but it's a \$1.5 million commitment fee, plus
23 their expense reimbursement which, as we disclosed in the
24 Reply, the expect to be about \$1.25 million so I'm up to
25 \$2.75 million and then they have a \$450,000 monthly fee

1 through whenever we emerge.

2 THE COURT: What are they doing for the \$450,000 a
3 month?

4 MR. KOENIG: We're talking to them about
5 converting the Debtor's (indiscernible) portfolio and
6 bitcoin (indiscernible) and utilizing the benefit of
7 (indiscernible) as a proprietary trading platform and a deep
8 knowledge in the space. We're consulting with them about
9 how they would distribute liquid cryptocurrency under their
10 Plan and making sure that they're ready to stand up the
11 mining business. All of this is something that any bidder
12 needs to do. The difference is, Fahrenheit is the winning
13 bidder, and they expect to succeed. So, that's sweat equity
14 that is reasonable to expect them to do on their own. The
15 Brick is the backup bid and for them to be running
16 alongside, they don't have any expectation that they're
17 going to be the transacting counterparty at the end of the
18 day. They have to be ready if we call them on any given day
19 and say, "We need to pivot", we can't be starting from
20 scratch. That's the whole point of having a backup bidder.

21 THE COURT: But what are they going to do for
22 \$450,000 a month?

23 MR. KOENIG: Your Honor, I went through the
24 consulting services that we think are necessary and
25 appropriate to make sure that we -- that they're ready to go

1 if we need to call on them.

2 THE COURT: Let me hear from Mr. Colodny, do you
3 want to address it and then I'll give Ms. Cornell a chance.

4 MR. COLODNY: Your Honor, Aaron Colodny for the
5 Official Committee of Unsecured Creditors. I -- it's the
6 Debtor's Motion and to the extent that you require them to
7 follow and retain a professional. We defer --

8 THE COURT: Don't you think that -- you don't
9 believe that this -- that they require retention as a
10 professional?

11 MR. COLODNY: As a --

12 THE COURT: For a consultant fee of \$450,000 a
13 month? They don't have to be retained?

14 MR. COLODNY: Your Honor --

15 THE COURT: What's the position of the Committee
16 on that issue? And then explain it.

17 MR. COLODNY: Your Honor, I think it is
18 appropriate for all professionals in this case to be
19 conflict-free, to file a professional retention application
20 or not. If it's the Debtor's position that they are not
21 being professional within the meaning of 327(e) --

22 THE COURT: And you believe that's correct? The
23 Committee supports compensating them as a consultant for
24 \$450,000 a month, without retention, without approval,
25 without establishing they're conflict-free, the Committee

1 believes that the Debtor should be able to pay these fees
2 and have them as a consultant without having them retained -
3 -

4 MR. COLODNY: The way that I look at the economic
5 benefit of this, to the extents that we need to pivot and we
6 need to pivot quickly, I think that being able to move on a
7 couple days' notice saves \$20 million in this case, which to
8 me, when I looked at --

9 THE COURT: So, let the move quickly and seek to
10 be retained.

11 MR. COLODNY: If that is what Your Honor decides,
12 that is perfectly --

13 THE COURT: But I want to know what -- tell me, do
14 you in your professional judgment, believe that as a
15 consultant to the Debtor, they're not required to be
16 retained?

17 MR. COLODNY: Your Honor, as a professional for
18 the Debtor, I think they have to meet the requirements of
19 all other professionals.

20 THE COURT: Thank you. Ms. Cornell?

21 MS. CORNELL: Thank you, Your Honor. Again, this
22 is Shara Cornell at the Office of the United States Trustee
23 and thank you again for allowing me to appear virtually
24 today. I appreciate it. The motion (indiscernible) to pay
25 a backup bidder a variety of fees, including, as discussed

1 earlier, an expense reimbursement commitment fees and
2 consultant fees.

3 There's no support for these biddings either in
4 case law or the Bankruptcy Code. Instead, the Debtors rely
5 solely on their business judgment, a statement that has been
6 rejected for evaluating a punitive backup -- backup bidder
7 fees. See (indiscernible) Environmental Energy, Inc.,
8 (indiscernible) F3D 527 (indiscernible) 1989; and
9 (indiscernible) Energy Channel, LLP, (indiscernible) F3d
10 200. That's at (indiscernible) 2010.

11 Specifically, the considerations that underlie the
12 Debtors' judgment may be relevant with the Bankruptcy
13 Court's determination on a request for breakup fees and
14 expenses but the business -- the business judgment rule
15 should not be applied as such in the bankruptcy context.
16 O'Brien 181 F3d 535.

17 The burden is on the Debtors to prove the
18 necessity of and the benefit to the estates from the
19 proposed fees. The Debtors have failed to meet this burden
20 in demonstrating that Brick is entitled to the fees because
21 the Debtors' (indiscernible) in having submitted a losing
22 bid at the auction. The Debtors' (indiscernible) no legal
23 authorities to support the payment of the fees. The bidder
24 was never even marketed as a second sale, never even tested
25 with the market. It's great that they got another bid, but

1 when they filed the motion they didn't say they were
2 accepting further -- further offers just for a wind-down.

3 So, to the auction associated with that, backup
4 bidders do not get opportunity costs. The Brick plan itself
5 is an orderly wind-down to exchange assets and a
6 reorganizing of the mining assets, which could also be
7 accomplished in a Chapter 7, where mining is sold and the
8 remaining (indiscernible) --

9 THE COURT: I don't -- I don't agree with that,
10 Ms. Cornell.

11 MR. COLODNY: The -- okay. But it calls into
12 question as to the propriety of these views. And, again,
13 with the consultation fees, as Your Honor pointed out
14 earlier, how does the Debtor hire a potential purchaser as a
15 consultant? They haven't addressed the potential conflict
16 issues at all. How can they consult on a deal that they are
17 involved in? How are they not (indiscernible)?

18 And if the Debtor truly needs their services, for
19 whichever Brick entity is providing the services, should be
20 engaged as a retained professional by the estate, not in an
21 (indiscernible) consultation agreement. However, I'm still
22 not convinced that the professionals that are currently
23 retained cannot perform the proposed consultation services
24 and keep the Brick bid on the same playing field as
25 Fahrenheit or any other options.

1 We have competent investment bankers, financial
2 analysts on both the Debtors and the committee. There are
3 block (indiscernible) analysis. There are a lot of
4 professionals already working in this case. The risk of
5 duplication of efforts is serious and there is no mechanism
6 for review because Brick is not going to be retained as a
7 professional pursuant to the motion.

8 Moreover, under the Fahrenheit deal, the buyer
9 also has to convert all claims to BTC and E. So, whether
10 the buyer has to maximize the value of the liquid assets
11 there as well, it appears as though the functions under the
12 Brick consulting agreement will be duplicative even if we go
13 forward with the Fahrenheit approach. How much do these
14 services really cost? How many hours are you going to need
15 to be expanded? Who will determine if the fees are
16 appropriate? These are just a couple of the, you know,
17 overarching questions that we really need to discuss.

18 Your Honor, I also wanted to address a case
19 citation by the Debtors in their reply brief, if I may. The
20 Debtors cite to In Re Bethlehem Steel Corp 2003 Westlaw
21 21738964 (S.D.N.Y. 2003). While it's true that the case
22 does evaluate the payment of fees under 363(b) it
23 (indiscernible) reviewing whether a debtor can reimburse a
24 creditor's professional fees. There, the debtors were
25 seeking to pick counsel for the union because their efforts

1 in negotiating were integral to formulating a workable plan.

2 Here, Brick is not a creditor. Brick is not
3 similarly situated to the USWA and Bethlehem. Brick is a
4 bidder in an auction. And, moreover, this really isn't a
5 reimbursement motion either like Bethlehem. The motion
6 includes so much more: Commitment fees, consultation fees
7 and expense reimbursements. How a commitment or
8 consultation fee fits into Bethlehem, well, I really don't
9 see it myself.

10 And Judge Stein in evaluating a 503 substantial
11 contribution claim in In Re SNY Enterprises, LLC,
12 (indiscernible) 452, Bankruptcy E.D.N.Y 2012, found that a
13 would-be purchaser consistently acted to further its own
14 economic interest and not to advance an entire bankruptcy
15 process. And at most, Conferred asserted only incidental
16 benefits on the estate.

17 Brick is clearly acting to further its own
18 economic interest here and not to advance this bankruptcy
19 estate. And any benefit is incidental and therefore does
20 not rise to the level of substantial contribution. I'm
21 happy to answer any other questions Your Honor may have
22 regarding our -- our objection today.

23 THE COURT: Mr. Koenig? Well, before I -- anybody
24 else want to be heard before Mr. Koenig comes back to the
25 microphone? Go ahead.

1 MR. KOENIG: Thank you, Your Honor, again, Chris
2 Koenig. So, look, again, the fees are to make sure that
3 they are ready to step in. They are not being hired as a
4 consultant to the Debtors. We need to work with them --

5 THE COURT: That sounds like you -- exactly the
6 opposite of what you told me before.

7 MR. KOENIG: I said -- I said that we were
8 speaking with them, we were consulting with them. That
9 doesn't make them a consultant.

10 THE COURT: You know, we don't have a transcript
11 that can be read back, but how many times you said the word
12 consultant?

13 MR. KOENIG: It doesn't make them a consultant of
14 the Debtors' fund.

15 THE COURT: Who are they consulting for then?

16 MR. KOENIG: We -- we are working with them to
17 ensure that they are ready to step in as the backup bidder.

18 THE COURT: Go ahead.

19 MR. KOENIG: Your Honor, look, we will -- we think
20 it's very important to have a backup bidder. We think that
21 there's an awful lot of value --

22 THE COURT: That I agree with.

23 MR. KOENIG: We think that there's an awful lot of
24 value, and that comes with a cost.

25 THE COURT: That I agree with. I agree it's

1 important, and I understand, you know, Mr. Schreiber's
2 declaration I think pointed out that the Fahrenheit
3 proposal, which is the selected bid, is really for a
4 different construct. And I think -- I think Voyager, among
5 others, has shown the importance of being able to pivot
6 quickly to another alternative structure that can be
7 included. Okay.

8 I don't -- contrary to what Ms. Cornell has said,
9 I do believe that Brick is entitled to be compensated.
10 Okay, the question is how much and for what? I'm -- the
11 monthly consultation fee of 400,000 -- \$450,000, they're
12 going to have to be retained as a professional in this case
13 in order to be entitled -- and you're going to have to show
14 that that's a reasonable fee for it. We've got lots of fees
15 built into this proposal. It's truly not clear to me what's
16 the aggregate amount of compensation that they would be
17 entitled to if the Debtor winds up going forward, if
18 Fahrenheit is the successful -- and it's confirmed and --
19 and, you know, when it goes effective, I don't know -- how
20 much will Brick be entitled in the aggregate to have
21 received by then? I don't know. Okay, I have real
22 questions about it.

23 You've built in so many different fees and
24 reimbursements and everything else. That's unacceptable to
25 me at this point with not sufficient disclosure or

1 information. I don't agree -- the point I don't agree with
2 -- I agree with Ms. Cornell that if they're going to be a
3 consultant, they need to be retained. You retain
4 professionals. Mr. Colodny was choking on whether he was
5 going to answer my question as to whether they had to be
6 conflict-free, retain this as a professional. I understand
7 the committee is supporting this Brick proposal, okay, but
8 you're going to have to go back to the drawing board.

9 To be clear, I'm not opposed to approving an
10 arrangement where Brick is compensated. I need to
11 understand what they're doing for it and whether those are
12 reasonable amounts. And if it involves a consultation fee,
13 they're going to have to be retained.

14 MR. KOENIG: Understood, Your Honor. So, let us
15 go back to the drawing board with the Brick and the
16 committee and come back with a revised proposal.

17 THE COURT: So, this motion is denied without
18 prejudice.

19 MR. KOENIG: Understood.

20 THE COURT: Okay?

21 MR. KOENIG: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. KOENIG: I'll turn over the lectern. I think
24 we're in the insurance automatic stay portion of the agenda.

25 THE COURT: Yes, okay.

1 MR. KOENIG: Thank you.

2 MR. WINDELS: Good morning, Your Honor. Kevin
3 Windels from Kaufman Dolowich & Voluck on behalf of Euclid
4 Financial Providers, LLC. Your Honor, this is a motion for
5 relief from the automatic stay to allow underwriters to
6 advance and pay defense costs of certain insureds who have
7 made claims under a direct (indiscernible) liability policy
8 issued to Celsius. Your Honor, the motion has been opposed
9 but --

10 THE COURT: Well, not really opposed.

11 MR. WINDELS: Well, kind of -- yes, Your Honor.
12 Well, it was opposed by one -- one other secured creditor,
13 Your Honor, and partially opposed by the bidder and
14 committee of unsecured creditors.

15 THE COURT: Let me kind of cut through it, okay?
16 depending on what conditions are included in it, I believe
17 the law supports granting the motion, okay. When I say the
18 conditions with reporting requirements, etc., I just went
19 through this in SVB Financial Group. I'd written on D&O
20 issues before, so I think I understand the issues. But --
21 so, to the extent that I have a pro se creditor opposing the
22 relief in full, I reject that position, okay? The question
23 is what -- what are the appropriate conditions that are --
24 or requirements, reporting requirements that should be built
25 into the order?

1 MR. WINDELS: Your Honor, we did not oppose the
2 partial objections by the Debtor and committee of unsecured
3 creditors on the reporting function. We have submitted a
4 proposed revised order to the Court with our reply on
5 Monday, which essentially indicated we would report to them
6 in the same format that we would report to the U.S. Trustee.
7 What we do have an issue with are two other conditions that
8 they're seeking to implement, one of which is the
9 implementation of a pro rata distribution under the policy,
10 which is not provided for under the policy terms nor is it
11 provided for any case that we know of ever seen, which
12 literally would alter on an extra contractual basis the
13 terms of the policy. So, we are certainly strongly opposed
14 to the suggestion.

15 THE COURT: What's the aggregate amount of
16 insurance available from all levels of the tower?

17 MR. WINDELS: Your Honor, I believe that was set
18 forth on Page 5 of the Debtors' opposition and essentially
19 Sides A, B and C in a total limit of 7.5 and -- from what
20 they say, Your Honor, there's a total policy limit of \$30
21 million.

22 THE COURT: Okay.

23 MR. WINDELS: And, again, Your Honor --

24 THE COURT: Regrettably, that gets eaten through
25 pretty quickly.

1 MR. WINDELS: I'm sorry, Your Honor?

2 THE COURT: I said, regrettably, that will
3 potentially get eaten through pretty quickly.

4 MR. WINDELS: I can't --

5 THE COURT: It sounds like a lot of money, I know,
6 but --

7 MR. WINDELS: Yeah, I can't forecast the future
8 but I can understand Your Honor's point. Okay, but, Your
9 Honor, simply what they're suggesting is not something that
10 we can ever agree to or could countenance. Simply put, the
11 policy does not provide for pro rata distribution.

12 THE COURT: So, one of the provisions that I've
13 been urged to include is a requirement that the individual
14 insureds consent to the jurisdiction of this court.

15 MR. WINDELS: I'm sorry, I missed you again.

16 THE COURT: One of the conditions that has been
17 urged upon me is a requirement that the individual insureds
18 consent to the jurisdiction of this court.

19 MR. WINDELS: Your Honor, the objections filed
20 suggest that the Court should implement a condition of the
21 order which says that the Court should require the
22 individual to subject themselves to jurisdiction of this
23 Court for all purposes. I don't believe that that is
24 something that -- that should be included in the order. It
25 certainly is not something that's in the insurance policy,

1 for that matter. But I don't see the basis -- the legal
2 basis for such a condition being implemented.

3 THE COURT: Okay. You have, I take it, no
4 objection to the reporting requirements that they --

5 MR. WINDELS: We do not, Your Honor.
6 (indiscernible) put into our proposed revised order.

7 THE COURT: You are opposed to the request for pro
8 rate allocation scheme for the reasons you said?

9 MR. WINDELS: We are firmly opposed to that, Your
10 Honor.

11 THE COURT: Okay, all right, thank you.

12 MR. WINDELS: Thank you.

13 THE COURT: All right, who else wants to be heard?

14 MS. JONES: Good morning, Your Honor. Elizabeth
15 Jones of Kirkland & Ellis on behalf of the Debtors. Your
16 Honor, as you correctly stated, we're not opposed with the
17 respect to lifting -- lifting the automatic stay or
18 addressing whether or not the proceeds are property of the
19 estate. We do think, based on the previous rulings in this
20 court and in others with respect to balancing the harms,
21 that it would be appropriate to put in two additional
22 protections on top of the reporting. One with respect to
23 jurisdiction. Our main concern here is that we have certain
24 parties seeking to invoke the jurisdiction of the Court with
25 respect to their rights under the contract but not with

1 respect to any potential obligations in the future. We --

2 THE COURT: What do you mean, with respect to any
3 obligations in the future? I -- I have no problem, and I
4 don't think the insurers have a problem, about requiring
5 just that the Court retains jurisdiction with respect to all
6 issues concerning the insurance. Any of the individuals who
7 receive policy proceeds are going to be subject to the
8 jurisdiction to the Court with respect to the insurance
9 issues. But how do you justify a hook that they submit to
10 jurisdiction that the bankruptcy -- I mean, if I have
11 jurisdiction, I have jurisdiction. If I don't, I -- you
12 know, this seems to me to be an improper condition you want
13 to impose.

14 MS. JONES: We understand, Your Honor, and our
15 main concern is what you outlined with respect to the
16 policy. I think our concern was if we start carving things
17 back, we might run into a -- to a gray area.

18 THE COURT: Well, give me an example of what you -
19 - let's assume that I agreed with the Debtors' proposal on
20 submission to jurisdiction. What -- what would the result
21 be with respect to -- what jurisdiction would this Court
22 have with respect to any -- for claims against anyone who
23 would receive policy persons?

24 MS. JONES: So, I think the circumstance that
25 we're concerned about here is for the Court to -- I know

1 that this has come up -- and some of these issues we saw a
2 lot with MF Global and some issues with respect to whether
3 the Court has personal jurisdiction to either -- for the
4 extent, let's say they're -- the advanced payment provision
5 comes into play. There is a claw-back. And if either
6 Euclid or any of the other underwriters or the Debtors are
7 seeking to enforce that claw-back, and the individual
8 insureds that have received the funds argue that the Court
9 doesn't have the authority to issue the order requirements
10 of payback --

11 THE COURT: But that would be -- but if the order
12 included a requirement that anyone receiving proceeds submit
13 to the jurisdiction of the Court with respect to anything
14 related to insurance, the proceeds that they have received -
15 - I don't have a particular problem about that.

16 What I'm reacting to is if the Debtor, or the
17 committee, or if there's a trust post-confirmation brings an
18 action against officers and directors who received insurance
19 proceeds, the claim -- it doesn't relate to the insurance
20 proceeds they received; it relates to alleged misconduct
21 that they may have -- the Court either does -- you know,
22 absent the insurance, the Court either does or doesn't have
23 jurisdiction over them. I mean, I'm just -- I'm trying to
24 understand how far you're trying to extend what they're --
25 what somebody would have to consent to.

1 MS. JONES: Yes, we understand, Your Honor. Our
2 goal is, with respect to the policy, if our language and
3 proposals aren't precise on that, we're happy to narrow it
4 and make it clear that we think the conditions should be
5 limited to respect -- with respect to receiving proceeds
6 from the policy.

7 THE COURT: Okay.

8 MS. JONES: With respect, Your Honor, to the pro
9 rata point, our -- our concern here is -- we know these
10 insurance internal matters come up frequently in a lot of
11 cases. Here, we're a year in. There have been a number of
12 claim submitted. Our understanding is that at this time, no
13 approvals have been made so we're really at the very
14 beginning of potentially how to distribute this policy.

15 One -- one point we wanted to clear -- clarify,
16 there are -- there is about 30 million on the tower. Ten
17 million is just for the independent directors, and then an
18 additional about 13.75 million of the remaining 20 or so is
19 for prior to the petition date. So, 6.25 million is for
20 acts after the petition date. So, that's how it sort of
21 breaks down.

22 And at this point, where we believe that the
23 universe of claims are essentially known and we think that
24 they are going to exceed the 1.5 million, all that we're
25 asking, if that's clear after they've reviewed the claims

1 submitted to date, made their decisions on approval, that
2 allocation is done fairly. While it's true that that's not
3 a requirement in the contract, there is no requirement in
4 the contract whatsoever on how to allocate (indiscernible)
5 among parties.

6 THE COURT: I don't -- I'm trying to understand
7 where I would derive the power to impose allocation
8 requirements that don't appear in the policy. Either the
9 individuals who are protected by the insurance are entitled
10 to policy proceeds or they're not. And I understand what
11 you might be trying to accomplish.

12 So, I know -- look, I read in the blogs that
13 Mashinski is still in the New York Attorney General suit. I
14 read yesterday in the ABI news that there's been an
15 amendment in the class securities class action bringing
16 someone else in as -- for (indiscernible) sales. I don't
17 know what the status of non-bankruptcy court litigation -- I
18 don't know how many of the officers and directors have been
19 named as defendants in any of them. But I'm -- I don't --
20 where do I derive the authority to impose any pro rata
21 requirements? If the proceeds -- if the policy proceeds are
22 there to protect the covered individuals, how do I decide
23 no, I'm sorry, you're only going to get this much of it?

24 MS. JONES: Yes. And it's something we've thought
25 about as well, Your Honor. And I think a couple of points

1 with respect to both looking at 362 and 105 of the
2 Bankruptcy Code -- one with evaluating the (indiscernible)
3 factors of whether cause exists to lift the stay, there is a
4 factor of balancing the harms. And while it is not as clear
5 as the Court can fashion, sort of maybe in a pro rata
6 allocation --

7 THE COURT: How do you square it with either my MF
8 Global decision or the more recent SVB Financial Group
9 decision? I've written on insurance in other cases as well.

10 MS. JONES: Yeah, so we do think that this falls
11 in line with sort of a reporting requirement to the extent
12 that it is not -- we don't want to tell the insureds who
13 they can and can't approve. That's exactly to your point.
14 Our goal here is not to say that there should be certain
15 insureds that are entitled to receive the benefits of the
16 policy that aren't going to get it. Our goal here was
17 something along those lines of there is a limited amount of
18 resources to go around. Unlike SVB and MF Global, we don't
19 have hundreds of millions of dollars in tower proceeds. We
20 have a very limited amount here. At this point, a year into
21 the case, where, again, compared to SVB, we're very early
22 and there is a lot of speculation. We know that there have
23 been a lot of claims been submitted. The underwriters
24 believe it's going to exceed the limits. And so where we
25 have a much more clear insight into the universe of claims,

1 when they are making the decisions of who to approve, with
2 that decision also comes their ability to make a decision on
3 how much, and in what amount, and who is going to get it.

4 We understand that --

5 THE COURT: I don't -- what I don't understand is
6 where I get the -- where the authority for me -- once, as a
7 legal matter, proceeds go to the individual insureds, what,
8 as a legal matter, where do I get the authority to say so
9 much -- only so much to this person and so much to that
10 person? I don't know where that would come from.

11 MS. JONES: Right. And I know Section 105 is
12 broad and it's used as a catch all. But our point here with
13 doing it with respect to Side A is there -- and we've all
14 reserved the issues with respect to A, B and C -- but our
15 hope and our goal was to put in a process in place at the
16 start of starting to eat into the insurance tower so that if
17 we get to the points where we have to come back and we have
18 to argue the issue of whether we think BNC should be -- and
19 whether cause there exists to lift the stay, that we already
20 have a process in place. That we're not changing our
21 position or we're not altering that and getting into the
22 issues of has this been thoughtful and fair and -- we
23 understand that it's a little bit of a trickier point but we
24 do think, based on the information we have and what we know,
25 that we have a responsibility to at least advocate for an

1 equitable distribution of those proceeds. And in
2 bankruptcy, where there a lot of equitable remedies
3 fashioned that may not exist outside of bankruptcy, we tried
4 with the information we had to propose that solution. That
5 didn't encroach on the insurers' rights and ability to
6 determine who even should be approved for proceeds.

7 THE COURT: Okay, thank you.

8 MS. JONES: Thank you.

9 THE COURT: All right, who else wants to be heard?

10 MR. COLODNY: Your Honor, Aaron Colodny on behalf
11 of the official committee of unsecured creditors. With
12 respect to the amount of insurance that you asked about,
13 there's not a lot here. \$30 million, as was described, 10
14 is for the special committee, 6.5 is for acts after the
15 petition date. And so, really, at the end of the day,
16 you're looking at about \$13-14 million.

17 THE COURT: That doesn't go very far.

18 MR. COLODNY: It does not go very far. With
19 respect to the jurisdictional question, Your Honor, if you
20 are comfortable limiting it to the insurance policy that's
21 fine with us. The point that we had was --

22 THE COURT: Do I have authority to impose a
23 condition that in order to get insurance proceeds, they have
24 to generally submit to the jurisdiction of the Bankruptcy
25 Court for everything? I don't think so.

1 MR. COLODNY: I -- I believe a 362 gives you a
2 broad ability to condition relief from the automatic stay.
3 And to the extent someone comes to the Court asking for
4 relief from the automatic stay, and here we have a former
5 director asking for your relief and saying it was a limited
6 appearance for a sole purpose, I think if you are hearing
7 for that purpose, it is perfectly acceptable for this Court
8 to say that in the event something were to happen in the
9 future and I -- not -- yeah, everything has to be proven.
10 That is abundantly clear.

11 It is perfectly fine to say we are -- okay, to the
12 extent they're seeking relief from the Court, you have the
13 ability to get that back if the contract provides, they are
14 entitled to that.

15 THE COURT: Well, if the issue is whether I should
16 have jurisdiction to rule on any claw-back claims if they
17 received insurance proceeds, I'm not going to rule from the
18 bench but, in theory, I don't have a problem with that.
19 It's linked to the insurance and the payments they've
20 received by virtue of the stay being lifted and their
21 receiving insurance proceeds.

22 If, for example, it was a determined -- in a non-
23 Bankruptcy Court litigation, there was a determination that
24 a particular insured acted in bad faith and was not entitled
25 to receive policy proceeds, for example, where it's clawing

1 back insurance proceeds that have only been received because
2 I lifted the stay for them to do it, I understand the basis
3 for that. What I don't -- where I'm -- again, I'm not
4 ruling -- where I have a problem is if you're trying -- if
5 the collective group is trying to use this motion to impose
6 a condition, that individuals insureds who receive any
7 insurance proceeds submit to the jurisdiction of the
8 Bankruptcy Court to determine any issues regarding that
9 person's conduct -- that I have a problem with.

10 MR. COLODNY: So, I completely agree, Your Honor.
11 All we're receiving is with respect to the insurance
12 proceeds here. I will note that to the extent someone has
13 filed a proof of claim or filed a motion for relief --

14 THE COURT: That can be a different issue. You
15 know, you submit equitable jurisdiction of the Bankruptcy
16 Court when you submit a proof of claim.

17 MR. COLODNY: Correct, Your Honor. And then with
18 respect to your question of Ms. Jones about what authority
19 do you have to order this pro rata distribution, I think our
20 point with respect to the pro rata distribution is --
21 there's a pending motion before Your Honor asking the estate
22 to pay some of the costs of cooperating witnesses. I think
23 that that puts the estate property squarely in play with
24 respect to this insurance policy. To the extent that all of
25 the insurance is eaten up by one or two directors, and then

1 the estate has to pay for the cost of others, I think that
2 we should have some sort of sharing. Again, I think 362
3 gives you very broad discretion to condition the stay. And
4 to the extent that Your Honor is comfortable with some
5 apportion mechanism, which -- which takes into account the
6 potential the estate will have to pay for some of these
7 costs --

8 THE COURT: So, the Court's -- I still haven't
9 approved the -- the motion to compen -- reimburse employees
10 in connection with their cooperation. It might well be I'm
11 left, again, not ruling. I only -- haven't thought this
12 through clearly. It might well be that if an employee
13 receives reimbursement from the Debtor for its cooperation,
14 and if the conditions on that were good faith -- etc., good
15 faith by them, it may be that their receipt of the money
16 from the Debtor will require them to submit to the
17 jurisdiction of the Bankruptcy Court.

18 MR. COLODNY: I believe that's a condition to the
19 agreement.

20 THE COURT: Okay. All right. Well, what I would -
21 - again, I'm taking this under submission. I think -- let's
22 put the pro rata issue aside because I do have a real
23 problem about that. But with respect to submission to
24 jurisdiction by virtue or receiving insurance proceeds, I'd
25 like to see, hopefully, the Debtor and the committee can

1 work together and propose some language. And I'm going to
2 hear from anybody else yet as to what specifically is being
3 proposed on that. Okay.

4 MR. COLODNY: Okay, thank you, Your Honor.

5 THE COURT: All right, thank you, Mr. Colodny.
6 Who else wants to be heard? Do any of the insureds or the
7 representatives, do they wish to be heard on this? I mean,
8 they're the ones who are most affected by whatever I rule
9 here.

10 MR. VANTOL: Thank you, Your Honor, and good
11 morning. Peter Vantol from Hogan Lovells representing Mr.
12 Leon and Ms. Landis. I'd like to be heard on the pro rata
13 allocation point because I think Your Honor has hit on it.
14 Section 105's been around for a long time. It's the first
15 thing I heard as a junior lawyer from the Bankruptcy Court.
16 We could not find a single case where that was invoked to
17 impose the kind of pro rata allocation that's being sought
18 here.

19 I think the insureds have shown that it's a first
20 come, first serve basis. We have no problem with reporting
21 requirements, Your Honor. With respect to personal
22 jurisdiction, again, I think you hit the nail on the head.
23 Mr. Leon has filed a proof of claim. He's here seeking
24 proceeds. Our objection was the fact that they had said
25 earlier submit to jurisdiction for all purposes.

1 So, Your Honor, for example, brought up the UCC
2 adversary proceeding. That is to be determined. I'm not
3 saying we will assert a personal jurisdiction defense, but
4 it would seem to raise constitutional objections to have
5 someone forcibly waive a defense.

6 So, with that, Your Honor, I would urge you with
7 that one condition. We have no problem with reporting, and
8 I urge you to grant the motion.

9 THE COURT: So, when I was a practicing lawyer, I
10 did a lot of securities litigation defense, often officers
11 and directors, and was keenly aware of the issues that would
12 arise with respect to the insurance. My experience back
13 then was where the aggregate would look at the tower, the
14 proceeds were limited and rapidly being chewed up. I found
15 that the insurers tried to coordinate the efforts of counsel
16 to avoid duplication, to try and, to the extent possible,
17 limit one insured getting all the money and leaving
18 everybody high and dry without it. That obviously is for
19 the counsel for those who expect to be drawing on policy
20 proceeds, and the insurer to try and work out an acceptable
21 arrangement. I think reporting -- at least make everybody
22 keenly aware of what's happening. But I'd walk at -- unless
23 someone points to specific authority for me to be able to
24 impose pro rata requirements, I don't see where I have the
25 authority to do that.

1 MR. VANTOL: Thank you, Your Honor. And on that
2 allocation point, it's my experience, too, that generally
3 there is some rough justice done where the parties get
4 together and we're certainly happy to do that, and we drop
5 that reference in our reply brief. So, working out I think
6 is the best way to make sure there is no run on the
7 insureds' proceeds.

8 THE COURT: Okay.

9 MR. VANTOL: Thank you, Your Honor, I appreciate
10 it.

11 THE COURT: All right. Let me just suggest this:
12 You ought to consult with Mr. Colodny and Mr. Koenig with
13 respect to language, with respect to submission to
14 jurisdiction. Obviously, if your client filed a proof of
15 claim, that raises a set of issues. So, to the extent
16 there's jurisdiction, there's jurisdiction. I just want to
17 be careful how I cabin what the effect of a consent to
18 jurisdiction. I do think it's appropriate that anything
19 with respect to insurance, that they receive insurance
20 proceeds. And is that a claw-back? Well, I do think that's
21 appropriate. But why don't you consult with Mr. Koenig and
22 Mr. Colodny about the proposed language?

23 MR. VANTOL: Will do, Your Honor. Thank you very
24 much.

25 THE COURT: Thank you very much. All right, who

1 else wants to be heard? Any of the other insureds wish to
2 be heard? Okay, let me hear from the insurer's counsel
3 again.

4 MR. WINDELS: Your Honor, just briefly. Kevin
5 Windels for underwriters. We would just reiterate on the
6 pro rata issue that we really do not believe that the Court
7 should countenance what they're suggesting because it would
8 just create a huge, huge problem with this case. It's not
9 the policy. On top of everything else, it would exacerbate
10 issues between insurance with excess insurers and probably
11 most likely (indiscernible) coverage litigation which would
12 create more chaos and havoc for the Court.

13 THE COURT: I just -- I don't have the authority
14 to require it, but I urge -- I mean, there's not a lot of
15 money that's available with a separate pot for the
16 independent directors. So, that's not... It is what it is.
17 I have no problem about that. But the money that's
18 available otherwise is quite limited. I mean, it just --
19 and I would hope that the insurer would try to assure a fair
20 allocation, cooperation, avoid -- you know, I used to have
21 insurers' counsel saying, this was an unnecessary
22 duplication, can't you all -- sure, there are some issues
23 that are separate for each individual, but there are some
24 that are very common and we're just not going to pay for
25 everybody to do the same work. I'm just urging that that

1 happen because there's just not that much to go around.

2 MR. WINDELS: Understood, Your Honor, thank you.

3 THE COURT: Okay, all right. So, I'm going to
4 take it under submission and I do want to see -- I would
5 hope that you would all try and work out language for a
6 proposed retention of jurisdiction and submit it as soon as
7 possible, and I won't let this linger very long. Okay?
8 Thank you very much.

9 MR. WINDELS: Thank you, Your Honor.

10 MR. VANTOL: Your Honor, we don't have any further
11 business for the Court. May we be excused?

12 THE COURT: You can. I just want to be sure,
13 before you seek to be excused, the agenda had a separate
14 Item 8, Leon and Landis Motion for Relief From Stay. It
15 seems to me exactly the same issue.

16 MR. VANTOL: It is, Your Honor, exactly the same
17 issue. Thank you so much.

18 THE COURT: Thank you very much. You're excused.
19 All right, let's deal with Number 9, Caceres motion for
20 valuation of sell token.

21 MR. COLODNY: Your Honor, that was a pro se motion
22 filed by Mr. Caceres.

23 THE COURT: Yes. Mr. Caceres, go ahead.

24 MR. CACERES: Thank you, Your Honor. Santos
25 Caceres, pro se creditor. I am before the Court today to

1 ask Debtors and the UCC to treat this (indiscernible) the
2 same as all the 50 assets in this case. It's my
3 understanding that bankruptcy law states that all assets
4 must be (indiscernible) -- 81 cents on the day of the
5 petition. On the (indiscernible) sheet, (indiscernible) the
6 Debtors, the UCC who's supposed to be representing me and
7 all other creditors, (indiscernible) and holders, demanded
8 at 20 cent valuation for all (indiscernible) without sharing
9 any justification requirements. Neither the bidder nor the
10 Debtors have (indiscernible) to reduce the price from 81
11 cents with any of us.

12 This proposal hurts me directly as a non-insider
13 (indiscernible) holder. This is a 75 percent reduction on
14 my (indiscernible) open claim and the claims of
15 approximately 37,000 (indiscernible). There's no apparent
16 rationale for the (indiscernible) treatment of
17 (indiscernible). I request this court to intervene to make
18 sure the sell token claims are treated fairly and equitably,
19 as any other (indiscernible) creditor in the other group.

20 I'm happy to file any evidence with the Court
21 which clearly demonstrate that (indiscernible) not
22 manipulated by Celsius and no customer funds were used to
23 prop up the sell token as reported by the examiner. The
24 examiner did not access any company records regarding sell
25 token, stated on Page 97 of her report. Unfortunately, the

1 examiner mischaracterized \$600 million customer-requested
2 OTC by orders as purchases of sell token using customer
3 assets. All such transactions are recorded in emails from
4 (indiscernible) OTC (indiscernible) network inbox and an
5 Excel Spreadsheet (indiscernible) UCC, also which are held
6 with the Debtor and upon information and belief have also
7 been shared with the UTC.

8 We ask that the Debtor share all information
9 relevant to sell token with the court and the UCC finishes
10 the work analyzing and verifying all transactions that had
11 been sent to them (indiscernible) justify sell token
12 valuation of 81 cents. This includes the information that
13 UCC has already stated that they received information from
14 FTX regarding the short positions against sell token.

15 If Your Honor would like, a group of sell holders
16 have already done the analysis and we'd be happy to send it
17 -- submit the evidence with the Court. The analysis will be
18 accompanied by multiple affidavits from OTC desk users
19 representing a number of transactions with the OTC desk. A
20 number of such large sell token holders were contacted
21 recently by the Debtors (indiscernible) UCC. We're
22 surprised to see the latest filing from the Debtors that
23 they have reached a settlement with the sell token holders.
24 This group of sell token holders representing more than 20
25 million sell tokens from non-insiders has avoided forming a

1 group and hiring counsel in hopes that we can resolve this
2 outcome. All of their attempts to communicate with the UCC
3 have been rejected.

4 In conclusion, Your Honor, I'm asking for a ruling
5 on fair and equal treatment of sell token violation for all
6 (indiscernible) accounts sell token holders. If you would
7 like, Your Honor, I can provide one example that shows that
8 no manipulation took place and no customer funds were used
9 without express written permission. Thank you.

10 THE COURT: Mr. Caceres, you addressed briefly the
11 examiner's report which is -- it is hearsay and not
12 competent evidence for this purpose. But the examiner I
13 think briefly concluded that there was manipulation with
14 respect to the price of the sell token. I referenced
15 earlier in the hearing today just a report I read yesterday
16 that was a securities lawsuit -- I think, is it New Jersey,
17 Mr. Colodny?

18 MR. COLODNY: Correct.

19 THE COURT: In New Jersey, where the complaint was
20 being amended to add an additional defendant with
21 allegations about so-called wash sales. So, whether -- I'm
22 not making any determination today whether the price of sell
23 tokens was manipulated or not, but the fact that it may have
24 appeared to have a market price of 81 cents on the petition
25 date is rebuttable. That doesn't establish that that was

1 the price -- that's the value. It doesn't establish that
2 it's the value for purposes of any plan or confirmation to
3 the plan.

4 The -- you know, in the committee's response, they
5 also raise the argument that the sell token was a security
6 and, therefore, any claims with respect to the sell token
7 would be subordinated under Section 510 of the Bankruptcy
8 Code. You haven't had a chance to respond to that. It's a
9 very sophisticated issue and I would be very reluctant to
10 rule on it with pro se parties on one side and sophisticated
11 counsel on the other side. So, I'm not prepared to rule on
12 the issue that the committee raised in its response to your
13 motion.

14 It does seem to me the issues you raise, Mr.
15 Caceres, are very important to you and many others. I don't
16 doubt that and will have to be resolved. I think it's
17 premature for the Court to have to do that now. It will
18 either be a plan confirmation issue or it may arise in terms
19 of the claims allowance process. You file a proof of claim,
20 the Debtor, if it disagrees, or the committee, they can file
21 a claim objection and it can be resolved in that context.

22 One of the thing that I'm -- so, I don't know
23 whether you're prepared -- again, I'm really not -- I'm not
24 going to decide at this stage. I think that the Court
25 received quite a few. I think at last count, it was sort of

1 17 letters supporting your position, and the number may have
2 grown since we last checked on it. It was just over a two
3 to three hour period on Monday, there were 17 letters
4 supporting your position. So, I know this is a very
5 strongly held view of a large number of pro se creditors who
6 have sell tokens. And you're entitled to a fair hearing and
7 determination by the Court. So, I know just looking at the
8 appearance list for today's hearing, and I don't expect
9 necessarily to have any of these parties state their
10 position today, but at least two lawyers have appeared for
11 the New Jersey Bureau of Securities today -- were on the
12 list at least. One from the Texas Attorney General's
13 Office, from the Texas State Securities Board. Two lawyers
14 from the SEC were on the appearance list for today.

15 I'm not ordering but would certainly like to
16 receive any briefs that any of the securities regulators
17 would submit with respect to whether their view as to
18 whether the sell tokens are securities or not. I think the
19 issues are complicated. Again, I'm not prepared to rule on
20 it with only the committee. I think the Debtor supported
21 the committee in this, but I think that people like
22 yourself, Mr. Caceres, are entitled to have this issue fully
23 aired.

24 So, I think that it's -- for today, it's premature
25 and so I'm denying the motion that you've made. But I want

1 to make clear to you and the others who have raised this
2 issue, this is an important issue. I'm not -- it's not
3 going to be evaded. The Court is going to have to decide it
4 either in the context of plan confirmation or the claims
5 allowance process. You know, let me stop with that. I
6 don't know, Mr. Caceres, if you want to say something else,
7 please go ahead.

8 MR. CACERES: Thank you, Your Honor. Would it be
9 -- would it be fair to say that the United States Trustee
10 would need to get involved in probably creating a class -- a
11 (indiscernible) class here? I know we're late in the case
12 and I know --

13 THE COURT: No. Stop. I'm not saying that at
14 all. We're going to have -- assuming that a disclosure
15 statement is approved, there'll be plan confirmation. There
16 can be objections to it and it is important, in my view,
17 that those who are seeking to recovery 81 cents on the sell
18 token be adequately represented in this issue. You're going
19 to have to address the issue that the committee and the
20 Debtor have raised that sale tokens are securities and
21 subject to Section 510 of the Bankruptcy Code. Any claim
22 for that will be subordinated. It's important issues.
23 Sophisticated issues.

24 I think from the Court's standpoint, I think I
25 would hope it isn't going to be right now, because I'm

1 denying the motion without prejudice, I think it's premature
2 -- I hope there will be adequate briefing on the issue of
3 whether the sell tokens were securities. This issue of when
4 -- what crypto, whether it's securities or not may depend on
5 the nature of the specific crypto asset that we're talking
6 about. So, let me stop there.

7 Ms. Cordry, are you seeking to be heard? I saw
8 your name flash across my screen.

9 MS. CORDRY: I'm sorry, Your Honor, I'm not sure
10 why it flashed up but no, I'm not.

11 THE COURT: Okay, okay.

12 MS. CORDRY: (indiscernible) that you're raising
13 there but I'm not --

14 THE COURT: I would be happy to hear from you on
15 this issue, Ms. Cordry.

16 MS. CORDRY: I would agree (indiscernible)
17 regulators that may have a thought on it but we're not
18 seeking (indiscernible) at this point.

19 THE COURT: Okay. But, Ms. Cordry, let me just
20 say I hope you will talk with your client base and with the
21 other counsel representing state securities regulators to
22 discuss this issue and whether the regulators are -- want to
23 take a position on this issue. It's an important issue and
24 I just -- I may have commented on this before, I used this
25 phrase, I want it to be a fair fight. I don't think it

1 should be just a group of pro se creditors who feel very
2 strongly about it but don't have counsel at this point.

3 MR. COLODNY: Your Honor --

4 THE COURT: Mr. Colodny, go ahead.

5 MR. COLODNY: Yeah. So, Your Honor, I completely
6 agree with you and I want to be clear that we weren't filing
7 our objection to try to sandbag anybody to have it heard on
8 seven days' notice.

9 These pro se -- two pro se objections have been
10 pending for two to three months --

11 THE COURT: Well, there were at least 17 letters
12 in a two-hour period on Monday this week supporting their
13 position so...

14 MR. COLODNY: Correct. But my point is not that
15 people don't feel strongly about this, people have written
16 abdicating their position. My point is that the committee
17 did not intend to move forward today without a full record
18 before Your Honor. What we did was we filed an objection to
19 make our position clear and I think that some of the pro se
20 creditors raised that this was dropped at the eleventh hour.
21 I disagree with that.

22 We had a call where we spoke with Mr. Santos and
23 many other pro se creditors. It was some time ago and they
24 were adamant about 81 cents when we talked to them about the
25 subordination issue. It was in our second exclusivity

1 brief. It's in the plan. And what we wanted to do was lay
2 out the arguments so that everybody --

3 THE COURT: I'm not faulting you for raising the
4 argument, Mr. Colodny.

5 MR. COLODNY: I know.

6 THE COURT: I really am not.

7 MR. COLODNY: I have drawn a lot of personal ink
8 for this so I want to make it clear that I agree with your
9 fair fight comment.

10 THE COURT: I'm not faulting it. It needs to be a
11 fair fight.

12 MR. COLODNY: Correct. I agree. Thank you, Your
13 Honor.

14 THE COURT: So, look, as I say, I'm denying you
15 the motion without prejudice because I think it's premature,
16 but that doesn't mean that in the middle of a confirmation
17 hearing we're going to have however many days are going to
18 be taken up with this issue of whether the sell token is a
19 security, whether it's going to be subordinated and what the
20 value is. What I would hope would happen is that the
21 committee, the Debtors -- Debtors and other counsel with an
22 interest or pro ses who are interested in this would try and
23 work out whether it's immediately prior to the start of the
24 confirmation -- in the confirmation hearing. This is
25 important. This is separate -- it really is a separate

1 issue that can be dealt with.

2 If it's left to the claims allowance process, that
3 raises potential issues. People knowing really what are
4 they going to get, what's their recovery going to be. Okay,
5 so please confer and see if you can come up with an
6 acceptable proposal for timing and how to deal with this.

7 And, Ms. Cordry, I hope you and your
8 constituencies will --

9 MS. CORDRY: Look, Your Honor, just let me say
10 official for the record, Karen Cordry from the National
11 Association of Attorneys General, so you have it there.
12 And, yes, I will pass this question and this issue back to
13 my group -- and if they're going to take a position on the
14 securities issue.

15 THE COURT: And the SEC may want to take a
16 position on it too. They haven't taken a position on
17 anything in this case yet but they have filed some recent
18 actions against Coinbase and Binance, so a slightly
19 different issue. Not slightly. A different issue. But
20 okay.

21 MR. COLODNY: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. LOTONA: Your Honor, if I may be briefly
24 heard on this topic?

25 THE COURT: Go ahead.

1 MR. LOTONA: Dan Lotona, Kirkland & Ellis on
2 behalf of Celsius Debtors. We realize that this has been a
3 very divisive issue in these Chapter 11 cases. Your Honor
4 mentioned the support for 81 cents. There are equally
5 passionate arguments on the other side of that that --

6 THE COURT: I don't doubt it at all. I'm not
7 suggesting that -- I have no idea what the value of the sell
8 token was and the position is.

9 MR. LOTONA: Right. Exactly. And what the
10 Debtors and the committee were trying to do was strike a
11 balance in between those two positions to avoid a protracted
12 and costly confirmation fight, which it looks like we may be
13 headed for. And the Debtors will be prepared to carry their
14 burden, whichever position we take in the plan
15 reorganization. And we do agree with Your Honor that we
16 want it to be a fair fight.

17 So, we and the committee will seek build
18 consensus, which has been very important for us in these
19 Chapter 11 cases and will continue to do that. So, thank
20 you.

21 MR. ABREU: Your Honor, this is Artur Abreu.
22 Could I just give you some --

23 THE COURT: Yes.

24 MR. ABREU: About (indiscernible) trading of
25 course on cryptocurrencies in every single asset today

1 because of the lack of regulation. And a very important
2 aspect that I have to mention to you is that FTX, the FTX
3 International Exchange, currently in Chapter 11, had massive
4 short positions which is demonstrably proven and it's
5 public. Just to give you some perspective, on June 11, they
6 were paying an interest for you to open a position on the
7 wrong side. So, there was -- there were so many people
8 thinking that the price was going down. That for you to
9 take an opposite position, they were paying you 1,144
10 percent.

11 Additionally, on June 17h, they were paying 3,500
12 percent, and this keeps through the entire process.
13 Additional, this is on the derivative markets, also on the
14 spot market they were paying an interest for you to short
15 the token to 3,000 -- 2,600 percent.

16 I just want to highlight that the pressure to
17 downside on the price of sell was completely out of this
18 world and according to watching that data from the FTX
19 exchange, they did not -- they did not hold the short
20 positions of the token that they are saying. So, they
21 basically were selling tokens that there was no proven that
22 these tokens ever existed on the blockchain.

23 There was enormous volumes in the overall 500
24 million (indiscernible) markets to bring the price of this
25 token down. So, I -- I think it's domestically proven on

1 the blockchain and on the exchanges that there was massive
2 short positions to the down side. And eventually the price
3 actually -- there is a position that there is no
4 (indiscernible) that represented the tokens that FTX was
5 telling that they were selling. This would be called what
6 you might say a naked short position to the tune of 50
7 million tokens.

8 I think on the examiner's report and I think the
9 UCC also mentions that over 95 percent of the token was
10 dropped on the platform. So, there is not much tokens to be
11 even sold. This is like the issue that I think the judge in
12 the coming procedures should raise -- what is the size of
13 the downside pressure that was being applied to this token
14 and if this was (indiscernible) realize this. Again, just
15 to (indiscernible) FTX is in Chapter 11. There aren't much
16 of the assets that they told they had. And they had
17 previous proceedings against the manipulation as well.

18 So, I did put a letter -- I think Docket 2882 in
19 support of Mr. Santos' motion to highlight some debt
20 (indiscernible) and it's demonstrably proven. Also to
21 highlight that, according to the examiner's report, I think
22 Raj Bolger, the current chief financial officers, met with
23 the FTX exchange and the FTX exchange also has a trading
24 branch which is called Alameda, so Alameda traded against
25 their users. They took market positions. And it's

1 suspicious (indiscernible) that a few others (indiscernible)
2 after this meeting position on the short spot of sell token
3 is open, which has no assets backing on the blockchain.
4 These are things that should be followed by the UCC and
5 questioned about -- for the FTX (indiscernible) I think the
6 UCC has put some questions but it's very, very important to
7 mention the derivative markets. That's where most of the
8 pressure to the downside came because there was no spot sale
9 on the market. And I just wanted to say this.

10 THE COURT: Thank you, Mr. Abreu.

11 MR. ABREU: Thank you.

12 THE COURT: Let me just ask Mr. Lotona because --
13 so, or actually ask -- well, I don't know whether Mr.
14 Caladny or Mr. Lotona -- if I understand the position of the
15 committee, if the sell tokens are securities, the result
16 under Section 510(b) is that the claims of the holders of
17 the sell token would be subordinated to the unsecured
18 creditors in the case. Is that your position?

19 MR. LOTONA: Correct, Your Honor.

20 THE COURT: All right. And under almost any
21 imaginable scenario, unsecured creditors are not going to be
22 repaid in full and, therefore, holders of sell tokens, if
23 their claims are subordinated, would receive nothing. Is
24 that correct?

25 MR. LOTONA: Correct.

1 THE COURT: So, I see two separate -- well,
2 potentially two separate issues. First is either sell token
3 securities. Because if they are, the holders' claims would
4 be whatever the value of the sell token -- whether it's 20
5 cents or 81 cents would be subordinated and they'd recover
6 nothing. If there's a consensual plan that proposes to
7 resolve the disputes as to whether sell tokens are
8 securities or not and it's resolved consensually and the
9 Court has asked to approve a settlement, that approved
10 recovery by sell token holders, whether it's 20 cents, 50
11 cents, I'm not -- whatever that amount is, it would obviate
12 the need for determination by this court or an appellate
13 court as to whether or not the sell token is a security. Is
14 that a fair assessment? Mr. Colodny?

15 MR. COLODNY: I think that may be a fair
16 assessment with respect to the claims on the platform.
17 There's the separate issue of claims for fraud related to
18 the cell token. All right, so there's -- when I think about
19 it, there are claims for the return of cell token, based off
20 of balances and accounts. As the examiner's report showed,
21 there is also a potential and alleged fraud related to the
22 price of cell token. And so, individuals who purchase cell
23 token, on the OTC market, may make claims that they were
24 defrauded and bought at a higher price and have damages
25 against (indiscernible).

1 THE COURT: But your position would be 510b, that
2 the claim arising from the purchase or sale of a security
3 for damages arising from the purchase or sale, would include
4 fraud damages and your -- I take it, am I'm correct that
5 your argument would be that even the fraud claim in
6 connection with the cell token would be a claim that's
7 subordinated under 510b? Is that --

8 MR. COLODNY: Correct. But the -- the current
9 proposal under the plan is that compounds get 20 cents.

10 THE COURT: Correct.

11 MR. COLODNY: Not that fraud claims are 510b
12 claims. So, it may be that even if we're able to reach a
13 settlement with respect to the claims related to account
14 balances, the Court may need to determine 510b, with respect
15 to a potential larger universe of claims connected to the
16 fraud, in connection with the purchase of cells.

17 THE COURT: Okay. It's complicated.

18 MR. COLODNY: It's complicated. And -- and
19 luckily the Second Circuit's still (indiscernible) disallow,
20 I think we said this in our objection. We have Second
21 Circuit precedent from the Leeman Brother's case. I think
22 there is two different Second Circuit opinions on the
23 purchase of sale security, which covers 510b, but the issue
24 of whether cell token is a security is a unique issue, which
25 has not been determined by anyone.

1 THE COURT: Right. All right. But I -- I --
2 would you agree, subject to the approval of the Court on any
3 settlement that was reached, as part of a plan, the Debtor
4 with committee support, could consensually agree to settle
5 those issues and the settlement would have to be approved as
6 part of the plan?

7 MR. COLODNY: Correct.

8 MR. CACERES: Your Honor, may I say something?

9 THE COURT: Mr. Caceres, go ahead. Please, go
10 ahead.

11 MR. CACERES: Did you say to me?

12 THE COURT: Yes.

13 MR. CACERES: Yes, I've been a Committee member
14 since 2019. It's my understanding that the state regulators
15 of New Jersey have filed a ceased and desist order to
16 Celsius. It's also my understanding that if we're going to
17 decide cell token being a security, we also need to look at
18 all of the (indiscernible) accounts with other tokens and we
19 can conclude as well that those earn accounts issued by
20 Celsius represent also securities. So, if we're thinking
21 about subordinating cell token holder claims, we are
22 stepping into a danger zone here where we can
23 (indiscernible) and generating Celsius issued claims as
24 accounts, I'm sorry.

25 THE COURT: Are you -- are you ready -- do you

1 have an owned account as well?

2 MR. CACERES: Yes, sir. Yes. Yes, Your Honor.

3 THE COURT: I think we've gone as far with this as
4 we can today. These are difficult issues --

5 MR. IOVINE: Your Honor, can I say one thing,
6 please?

7 THE COURT: Go ahead Mr. IOVINE.

8 MR. IOVINE: Okay. The Debtor's counsel, Kirkland
9 and Owens, almost a representative wager. VGX was
10 determined to be -- or while the STC says is a security.
11 But they still paid out petition date prices. So, what's
12 the difference here?

13 THE COURT: These issues are all premature for
14 today, we've got lots of time to think about that much time.

15 MR. IOVINE: Well, then I request that the estate
16 --

17 THE COURT: No, I'm sorry -- no -- no.

18 MR. IOVINE: -- counsel --

19 THE COURT: No -- no. Stop. You have not filed a
20 motion. I'm denying, without prejudice, the motions that
21 were pending before me with respect to valuation of the cell
22 tokens. It will be dealt with in the future, I've heard
23 enough. Let's move on.

24 MR. IOVINE: Thank you, Your Honor.

25 MR. LOTONA: Your Honor, I'll turn them up and

1 (indiscernible) in order to appease him.

2 THE COURT: Okay. Is the fee examiner, fee
3 application and the fee examiner counsel fee application,
4 who's going to argue on that?

5 MR. SANTICHI: Good -- good morning, Your Honor,
6 this is Chris Santichi. Ms. Stadler is on as well, I
7 believe she's going to make the presentation to the Court.

8 THE COURT: That's fine.

9 MS. STADLER: Yes, I am, thank you, Judge. As
10 Your Honor knows, we've completed our first round. Oh,
11 Katherine Stadler of Godfrey and Kahn, on behalf of the Fee
12 Examiner. As you know, we completed our reporting on the
13 first interim fee cycle back in April, with an order entered
14 for the consensual award of fees. We have two pending
15 applications for the first interim fee period that are
16 deferred to the July 18th hearing and then we have a large
17 group of second interim fee applications, plus those two
18 deferred applications, schedule to go forward with
19 recommendations to the Court in connection with the July
20 18th fee hearing.

21 The process has gone smoothly. The professionals
22 have all been cooperative, our fee applications have been
23 accurate, but we are continuing to be engaged on behalf of
24 the fee examiner, and to complete our work through February,
25 which was mostly -- most of the work on the first interim

1 fee period reporting. So, if you have questions about any
2 of that, I'm happy to answer. Otherwise, the fee
3 applications will speak for themselves.

4 THE COURT: I -- I do have some questions about
5 the examiner's application. So, the examiner's application
6 seeks allowance of \$137,400.00 in compensation, and
7 \$2,046.28 in expense reimbursement. When I look at Exhibit
8 A to the examiner's application, it shows invoice numbers,
9 invoice period, total fees, shows a hold back. The total
10 fees that it shows, so October 22 through February 23, as
11 \$59,100.00.

12 So, I'm trying to understand what is it in the
13 application that I can look at that -- that backs up to the
14 \$130 -- you know, that comes -- that down to the \$137,400?
15 I'm just looking for the support for the -- in the
16 application for the numbering.

17 MS. STADLER: So, you're talking about the fee
18 examiner's application, not the checkbook?

19 THE COURT: Yes, I'm talking about the fee -- fee
20 examiner's application.

21 MS. STADLER: Yes. Okay. So, the fee examiner
22 fee application incorporates the four -- I'm sorry, five
23 monthly fee statements filed on most of their summary sheet.
24 The fee examiner was paid 80 percent of fees, and 100
25 percent of expenses on those five applications. So, the

1 exhibit is an effort to delineate what portion has been held
2 back and what portion has been paid pursuant to the order.

3 THE COURT: But that exhibit --

4 MS. STADLER: Your (indiscernible) --

5 THE COURT: -- that exhibit --

6 MS. STADLER: (Indiscernible) --

7 THE COURT: -- shows the holdback --

8 MS. STADLER: (Indiscernible) --

9 THE COURT: -- that Exhibit A shows the hold back
10 as \$11,820.00.

11 MS. STADLER: Right.

12 THE COURT: I'm trying to understand -- I just
13 want, you know --

14 MR. SANTICHI: I think it -- I'll have to act --

15 THE COURT: Go ahead, Mr. Santichi.

16 MR. SANTICHI: I think it's -- frankly, Your
17 Honor, I think it's a mistake and we'll have to circle back
18 on that, because my memory of those five months is
19 consistent with the amount that's in that Exhibit A and I'm
20 having trouble looking at it here on my computer, please
21 excuse me. Oh, for goodness sake, I just had it. And I --
22 it's interesting that you mentioned that, because I was
23 prepping for when you got -- I looked at the number in the
24 application and thought well, I'm doing better than I
25 thought, because that's not what I thought (indiscernible)

1 what I had billed, so I think we may just have a mistake
2 there.

3 THE COURT: Okay. Just -- look, check it over,
4 submit it. There were no objections that -- that were
5 filed. I don't think it's going to be necessary to have
6 another hearing. I just want to make sure that I understand
7 exactly what you're asking for --

8 MR. SANTICHI: Yes.

9 THE COURT: -- and what the support for it is.
10 Okay?

11 MR. SANTICHI: Yes, because if it is correct -- if
12 this is the correct number, we will provide you what
13 representation as to the backup for that.

14 THE COURT: That's fine. That's fine. Okay.

15 MR. SANTICHI: I apologize for the mistake.

16 THE COURT: Thank you.

17 MS. STADLER: As do I, Judge.

18 THE COURT: Okay.

19 MS. STADLER: We'll get to the bottom of it.

20 THE COURT: Okay. All right, with respect to Ms.
21 Stadler, your firms, fees, you're seeking \$637,735.00 in
22 compensation, that's a blended hourly rate of \$578.15.
23 Blended hourly rate for all timekeepers of \$590.50. I
24 didn't have any questions about your application. Does this
25 -- anybody else want to be heard with respect to this?

1 Okay. So, yours is approved, and again, with Mr. Santichi,
2 I just need to understand and see the appropriate support
3 for it and I'm sure I'll be able to enter an order on it
4 without having another hearing. Okay?

5 MS. STADLER: Yes, thank you very much, Judge.

6 THE COURT: Okay. Thank you very much. Thank you
7 Mr. Santichi.

8 MR. SANTICHI: Thank you, Your Honor.

9 THE COURT: Mr. Colodny.

10 MR. COLODNY: Your Honor, we have our co-counsel
11 (indiscernible) let me get over here for the cell motion,
12 may they be excused?

13 THE COURT: Yes, absolutely.

14 MR. COLODNY: Thank you.

15 THE COURT: All right. We're up to the status
16 conferences. First is for Shanks v Celsius Adversary
17 Proceeding 23-01010.

18 MR. D'D'ANTONIO: Good morning, Your Honor, Joe
19 D'ANTONIO, Kirkland and Ellis on behalf of the Debtor's.
20 We're here on three status conferences.

21 THE COURT: Right. So, we have Shanks, Giorgio,
22 which is adversary proceeding 23-01016, and --

23 MR. D'ANTONIO: The Ad Hoc --

24 THE COURT: Ad Hoc Group of Borrowers v Celsius
25 Network, adversary proceeding 23-01007.

1 MR. D'ANTONIO: That's correct, Your Honor.

2 THE COURT: Don't tell me your (indiscernible)
3 tell me your name again?

4 MR. D'ANTONIO: Joe D'Antonio, Kirkland and Ellis.

5 THE COURT: Thank you.

6 MR. D'ANTONIO: And as Your Honor's aware in the
7 Shanks and Giorgio adversary proceedings, the Debtor's
8 supply all dispositive motions to dismiss that at this
9 point, are fully briefed and the Debtor's believe are ready
10 for resolution and in the Ad Hoc Borrower's group, let me
11 discuss a little bit about the negotiations. The Borrowers
12 filed a complaint in early February. The Debtors have never
13 been served with a summons or complaint, nonetheless the
14 Debtors have engaged counsel to the Borrowers in
15 negotiations. We got to the auction and following the
16 auction and as discussed earlier --

17 THE COURT: I thought it was done.

18 MR. D'ANTONIO: We'd -- I'll let my other counsel
19 discuss -- I was not involved in the negotiations
20 themselves. But we do have a mediation date set with Judge
21 Wiles for next month. And that will be alone with the
22 counsel for the Committee, as well as the Ad Hoc Group of
23 Current Account Holders.

24 THE COURT: Okay. Well let's talk about Shanks
25 and Giorgio then.

1 MR. D'ANTONIO: Yes. And we understand that Your
2 Honor, wished to hear these in connection, given the overlap
3 of the --

4 THE COURT: Go ahead.

5 MR. D'ANTONIO: -- loan in terms of the use
6 issues. It's the Debtor's position, based on their motions
7 to dismiss, and I understand, Your Honor, doesn't want to
8 hear merits arguments today, but it's our understanding and
9 belief, based on those motions to dismiss that the Court
10 could rule on those and resolve these complaints, without
11 reference or interpretation to the underlying loan terms of
12 use. We believe that we've made arguments clear with
13 respect to the law of the case in interim order and our
14 belief that both those cases fall under the gambit of that
15 order. With that in mind, we're happy to take questions
16 from Your Honor, or hear any other issues you may have or
17 thoughts with respect to the most efficient way to resolve
18 these.

19 THE COURT: Sure. Mr. Shanks, I see you on
20 screen, go ahead.

21 MR. SHANKS: Yes, sir, I'm -- really trying to
22 claim is the -- the deposits that -- the excess deposits
23 back into my account. When Celsius froze everything, I had
24 and liquidated my loan, I had no access to either withdraw
25 or have an opportunity from any access bitcoin, unless

1 whenever we tried to come back.

2 THE COURT: Do you agree that the motion to
3 dismiss is fully briefed, is there anything else that -- I
4 mean, I'll schedule arguments. This is -- I'm not hearing
5 argument today. I'm not going to decide it without giving
6 you an opportunity to address the issues during argument.
7 But do you -- do you agree that it's fully briefed?

8 MR. SHANKS: Yes, Your Honor.

9 THE COURT: Okay. Are the arguments in Shanks and
10 Giorgio the same?

11 MR. D'ANTONIO: They overlap with the law of the
12 case issue would be the same in both, Your Honor.

13 THE COURT: All right.

14 MR. D'ANTONIO: I believe they're also overlapping
15 claims in each -- in each complaint that would, you know,
16 certain the argument would be similar.

17 THE COURT: Mr. Shanks, where -- where do you
18 reside? I'm just trying to understand. I don't know
19 whether there's a time change or whether you're in the East
20 Coast, or somewhere else. I'm just trying to figure out
21 with regards to time -- time to be scheduling a time of
22 argument.

23 MR. SHANKS: No, that's fine, sir, in Colorado.

24 THE COURT: Okay. All right. We -- we have a
25 hearing in Celsius scheduled for July 18th. What I'd like to

1 do is schedule the time for argument on Shanks and Giorgio
2 for the afternoon. I have something else at 2:00. But
3 schedule it for 3:00 on Tuesday, July 18th, and Mr. Giorgio
4 you can -- since you're in Colorado, I'll permit you to
5 appear by zoom, you don't have to appear in person. Are you
6 able to do it then?

7 MR. D'ANTONIO: Looking at Mr. Shanks --

8 THE COURT: I'm sorry, Mr. Shanks, are you able to
9 do it at 3:00 on July 18th? So, it'll be 1:00 your time.

10 MR. SHANKS: July 18th, 1:00, yes sir.

11 THE COURT: Okay. That's when we'll set it for.

12 MR. D'ANTONIO: Thank you very much, Your Honor.

13 THE COURT: Okay?

14 MR. SHANKS: Thank you.

15 THE COURT: All right, thank you very much.

16 MR. SHANKS: Thank you, Your Honor.

17 THE COURT: And you know, I will -- I've seen
18 these papers already, but I will have reviewed the papers
19 completely -- both sides papers before the hearing, but I
20 want to give you an opportunity to say anything else that
21 you want to say, okay?

22 MR. SHANKS: Thank -- thank you, Your Honor, I
23 have nothing else further to say.

24 THE COURT: okay. All right. Thank you, very
25 much. Let me just make myself a note. Okay. So, let's

1 deal with Giorgio.

2 MR. D'ANTONIO: Yes --

3 THE COURT: And it is -- is Mr. or Ms. Giorgio, I
4 don't know.

5 MR. D'ANTONIO: It's three plaintiffs represented
6 by; I believe his counsel was on zoom.

7 THE COURT: All right. Is the counsel for --

8 MR. ZAREH: Yes, Your Honor, good morning -- or
9 good afternoon, Your Honor, my name is Omid Zareh, Weinberg
10 Zareh Malkin and Price. We represent the Giorgio parties.

11 THE COURT: Okay. And is your -- this motion
12 fully briefed?

13 MR. ZAREH: Yes, Your Honor.

14 THE COURT: Okay. So, I won't -- are you
15 available for argument on the same time I've just said, 3
16 p.m., July 18th? I'll hear Shanks first and you immediately
17 following it?

18 MR. ZAREH: Yes, Your Honor, we are available for
19 3 p.m. on July 18th. My -- we're a New York firm, does Your
20 Honor, want us to be in person or will this be virtual?

21 THE COURT: I would prefer that it be in person.
22 Look, I've just -- this is a general comment. I'm trying to
23 move more and more of our hearings to in person or hybrid,
24 as we're doing today. And so, since Mr. Shanks is in
25 Colorado, I'm perfectly fine, per se to have the hearing

1 remote. Since you're in New York, let's plan on doing it in
2 the courtroom. Okay?

3 MR. ZAREH: Absolutely, Your Honor, we look
4 forward to it.

5 THE COURT: Okay. All right. So, now let's deal
6 with the Ad Hoc Group of Borrowers. Mr. Adler.

7 MR. ADLER: Good morning, or good afternoon, Your
8 Honor, it's David Adler, from Carter English on behalf of
9 the Ad Hoc Group of Borrowers. I'd like to say first, that
10 with respect to Mr. Shanks' adversary proceeding, that is
11 adversary proceeding 23-1010 and it was filed, I believe on
12 February 22nd. It is a duplicate copy of the Ad Hoc Group
13 of Borrower's complaint which is 23-1007. So, it was filed
14 afterwards, about two weeks, if I recall correctly. I think
15 that's -- as -- as noted by counsel, that this motion, the
16 complaint has not been scheduled. It's not been set with it
17 yet. We would ask for that. But we would also ask for the
18 opportunity to have all of these matters considered together
19 because there's so much overlap. Especially, I mean,
20 Shanks' is verbatim from the Ad Hoc Group of Borrowers.
21 Giorgio is a little bit different, but it involves the same
22 issues of interpretation with respect to lending terms of
23 use. So, that's our position. You know, we have --

24 THE COURT: Well, let me ask you this. But go
25 ahead and finish. I'm sorry, I cut you off.

1 MR. ADLER: No.

2 THE COURT: Have you spoken with Shanks and
3 Giorgio? Well, it was Giorgio, has counsel.

4 MR. ADLER: I believe I spoke with one pro se
5 party, it may have been Mr. Shanks over the complaint. I'm
6 not 100 percent certain, but I recall that that individual
7 lived in Florida who had issues that were nearly -- that
8 were overlapping with the Borrower's complaint. But it was
9 not anything substantive, Your Honor.

10 THE COURT: Let -- let me ask, because I agree --
11 just that the issues are the same, I'd like to resolve them
12 at the same time. And you've been active throughout this
13 case and what I would ask you to do is communicate with Mr.
14 Zareh, counsel for Giorgio -- Giorgio, et al, and with Mr.
15 Shanks; and see if you can consensually work out an
16 agreement to defer the argument. You know, it raises a
17 special -- obviously you're about to embark on mediation.
18 And the outcome in mediation I think will hopefully resolve
19 the issues for all. I'm, you know, I've got two fully
20 briefed motions in front of me. I don't want to deny them a
21 day in court. See if you can communicate with them and see
22 if you can work out an agreement with them for those -- for
23 those all to be heard together. I don't know whether Mr.
24 Zareh -- is he included in the mediation?

25 MR. ADLER: He is not, Your Honor, no. He's not a

1 member of the Ad Hoc to --

2 THE COURT: Okay.

3 MR. ADLER: -- the best of my knowledge.

4 THE COURT: Well, let's see what you can work out,
5 and I'll decide it -- it may be that I'll hear argument and
6 not decide it. You know, I've not been resolving things at
7 the hearing, I usually been taking things under submission,
8 on most things. So, I'm -- I'm -- all the issues, if
9 (indiscernible) the issues are the same, they ought to be
10 decided together. I don't want to disadvantage the Ad Hoc
11 Group by deciding in one adversary proceeding, and
12 particularly if it's a pro se, or even with counsel
13 representing them.

14 MR. ADLER: Okay. It has to be a fair fight, Your
15 Honor.

16 THE COURT: It has to be a fair fight.

17 MR. ADLER: What I would say is maybe in that
18 regard, we should set a schedule with respect to the Ad Hoc
19 complaint, so that we can -- so that we can have everything,
20 you know --

21 THE COURT: Well, why don't you work with Debtor's
22 counsel, I agree with that. Try and see if we can iron out
23 a schedule so that Mr. Shanks and Mr. Zareh, on behalf of
24 the Giorgio plaintiffs, don't think they're just being put
25 off indefinitely. So, there's a concrete schedule. I think

1 they'd be more likely to agree, I think and -- and they may
2 well be quite agreeable if they think that collectively you
3 have a strong position than might be asserted separately.

4 MR. ADLER: Understood, Your Honor.

5 THE COURT: Okay. I appreciate that.

6 MR. ADLER: Thank you.

7 THE COURT: Okay. Thank you very much. I think
8 that leaves us with one last status conference. The
9 Committee v --

10 MR. ZAREH: Your Honor, forgive me, Your Honor,
11 this is Omid Zareh, forgive me.

12 THE COURT: Yes.

13 MR. ZAREH: I'm just trying to put a button on
14 this. So, we're on for -- we're on for July 18th at 3 p.m.
15 --

16 THE COURT: Unless I change it.

17 MR. ZAREH: Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. HERMANN: Your Honor, if I may, excuse me, I'm
20 so sorry, but this is Immanuel Hermann.

21 THE COURT: No, Mr. Hermann. Mr. Hermann, stop.
22 Stop.

23 MR. HERMANN: Okay, it's just there's common
24 issues here, but you can (indiscernible) --

25 THE COURT: Stop. I have two adversary -- I have

1 three adversary proceedings in front of me. That's what I'm
2 dealing with at the moment. Okay. Mr. Zareh, talk with Mr.
3 Adler. Mr. Shanks should talk with Mr. Adler. We'll see
4 whether we can agree -- whether there can be an agreement on
5 a common schedule. I think, Mr. Zareh, I don't want to
6 decide these issues piecemeal, I think collectively you'd
7 have a stronger position than separately. So, let's do
8 that. Mr. Koenig, with respect to the Committee v Celsius
9 Network Limited --

10 MR. KOENIG: Thank you, Your Honor, again, Chris
11 Koenig, for from Kirkland for -- for Celsius. So, this is
12 the fraudulent transfer complaint that relates back to the
13 919 motion that I mentioned at the top of the hearing. Mr.
14 Colodny reminded me, we have briefing in that -- in those
15 disputes that we should stay -- I mean, in light of the
16 settlement, all parties have agree to stay that litigation,
17 we just wanted that point to be clear. I don't think there
18 would be anything else that we need to decide. I think this
19 status conference can be continued. I think that this --
20 this matter will be mooted by the settlement of the case.

21 THE COURT: Well, let me suggest this. With
22 respect to this adversary, file a stipulation adjourning the
23 dates sine die, just so the record's clear.

24 MR. KOENIG: Wonderful.

25 THE COURT: If I have to bring it back, but that

1 way it just doesn't fall off the radar screen completely.

2 MR. KOENIG: Wonderful. All right, thank you so
3 much. And just quickly, it's not on the agenda, we'd filed
4 the stipulation with the Committee about conversion of the
5 Debtor's all coins in the bit coin (indiscernible) -- we
6 submitted an amended form on stipulation earlier this week
7 that related to (indiscernible) from the SEC. We received
8 no objection. We'll just go ahead and submit that to
9 chambers.

10 THE COURT: Okay. Just submit it to chambers.

11 MR. KOENIG: Thank you, Your Honor.

12 THE COURT: Mr. Hermann, if you want to be heard,
13 I'll listen to you, briefly.

14 MR. HERMANN: Okay, Your Honor, thank you.
15 Immanuel Hermann, pro se creditor.

16 THE COURT: I like your shirt -- I like your
17 shirt, Mr. Hermann.

18 MR. HERMANN: Thank you, I'm sorry, it's not more
19 formal today, Your Honor. But I'm glad you like it. So, I
20 just wanted to quickly note that similar to Mr. Adler's
21 comments, and that actually, you know, I have an adversary
22 proceeding that would have been up today, but I consented to
23 adjourning it. But this issue of law of the case is common
24 to basically all adversary proceedings that are before you.
25 And I would hope that the parties can come to some mutual

1 agreement to brief this issue, along with the Ad Hoc Group
2 of Borrowers, then also my adversary complaints has overlap
3 issues with the Ad Hoc Group of Borrowers, and with these
4 other two complainants and that a lot of these complaints
5 copied elements of existing adversary proceedings, including
6 ones filed by Ad Hoc, the other one's filed by myself. So,
7 I would hope that, basically, we can come to some way to
8 brief. I don't consider the matter fully briefed. It's an
9 interrogatory order for one thing, and I don't think that's
10 been briefed. Here an order that is, you know law of the
11 case. I'll have to put more into that, but what I would
12 propose is, you know, we -- yeah, come to some kind of
13 mutual agreement about briefing it and deal with it in one
14 efficient proceeding that deals with it with respect to all
15 of the adversary proceedings.

16 THE COURT: So, I'm here to resolve disputes. If
17 you can agree on a schedule, you'll submit it and if it's
18 acceptable to me, I'll approve it. Okay? Let me put it
19 that way. I also --

20 MR. HERMANN: I (indiscernible) --

21 THE COURT: I -- I certainly much prefer parties
22 to consensually agree on a schedule and I think that's
23 largely happened in all the matters you've been involved in,
24 so far, Mr. Hermann, which I appreciate. Okay.

25 MR. HERMANN: Thank you, Your Honor.

1 THE COURT: Okay. All right, Mr. Koenig, do you
2 have anything else for today?

3 MR. KOENIG: No, thank you, Your Honor.

4 THE COURT: Okay. Thank you very much. It's nice
5 to see people in the courtroom.

6 MR. KOENIG: Thank you.

7 THE COURT: Okay, we're adjourned.

8 (Whereupon these proceedings were concluded.)
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: July 3, 2023

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